

**MASTER APPENDIX B-00**

**STANDARD TERMS AND CONDITIONS**

**FOR**

**"B" ALL APPENDICES**

**APPENDIX B-00  
INDEX**

<b><u>DERIVED FROM FAR NUMBER</u></b>	<b><u>TITLE</u></b>	<b><u>PAGE</u></b>
SPECIAL	<b>PROHIBITION OF ASSIGNMENT (APR 1997)</b> .....	1
SPECIAL	<b>DISPUTES (APR 1997)</b> .....	1
SPECIAL	<b>SECURITY REQUIREMENTS (JUL 1998)</b> .....	2
SPECIAL	<b>DEFINITIONS (JUL 1998) - (Derived from FAR 52.202-1 (OCT 1995))</b> ...	2
SPECIAL	<b>YEAR 2000 CERTIFICATION AND WARRANTY OF INFORMATION TECHNOLOGY PRODUCTS AND SERVICES (SPECIAL)(FEB 1999)</b> <i>(Applies to subcontracts and purchase orders for information technology products or services)</i> .....	4
52.203-6	<b>RESTRICTIONS OF LOWER-TIER SUBCONTRACTOR SALES TO NREL/GOVERNMENT (JUL 1995)</b> <i>(Applies to subcontracts exceeding \$100,000)</i> .....	6
52.203-7 (FD)	<b>ANTI-KICKBACK PROCEDURES (JUL 1995)</b> <i>(Applies to subcontracts exceeding \$100,000)</i> .....	6
52.203-12	<b>LIMITATIONS ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)</b> <i>(Applies to subcontracts exceeding \$100,000)</i> .....	8
52.212-4	<b>COMMERCIAL ITEMS - SUBCONTRACT TERMS AND CONDITIONS (MAY 1999)</b> .....	13
52.212-5	<b>CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS -- COMMERCIAL ITEMS (JUL 2000)</b> .....	17
52.215-2 (FD)	<b>AUDIT AND RECORDS -- NEGOTIATION (JUN 1999) AND ALTERNATE II (JUN 1999)</b> <i>(Applies to subcontracts exceeding \$100,000) (Use Alternate II of this clause for Cost-reimbursement subcontracts with State and Local Governments, educational institutions, and other nonprofit organizations)</i> .....	21
52.216-7	<b>ALLOWABLE COST AND PAYMENT (APR 1998)</b> <i>(For cost reimbursement subcontracts) (For educational institutions, substitute subpart 31.3; For State and Local Governments, substitute subpart 31.6; For other nonprofit organizations, substitute subpart 31.7. See 16.307(a))</i> ..	23

**APPENDIX B-00**

## INDEX

<b>DERIVED FROM FAR NUMBER</b>	<b><u>TITLE</u></b>	<b><u>PAGE</u></b>
52.216-8	<b>FIXED FEE (MAR 1997)</b> <i>(Applies to cost plus fixed fee subcontracts) . . . . .</i>	27
52.216-11	<b>COST SUBCONTRACT - NO FEE (APR 1984)</b> <i>(Applies to cost reimbursement subcontracts) . . . . .</i>	27
52.216-12	<b>COST-SHARING SUBCONTRACT - NO FEE (APR 1984)</b> <i>(Applies to cost sharing subcontracts) . . . . .</i>	27
52.216-15	<b>PREDETERMINED INDIRECT COST RATES (APR 1998)</b> <i>(Applies to cost reimbursement research and development subcontracts with educational institutions when predetermined indirect rates are used) . . . . .</i>	28
52.219-8 (FD)	<b>UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 1999)</b> <i>(Applies to subcontracts exceeding \$100,000) . . . . .</i>	29
52.222-2	<b>PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)</b> <i>(Applies to cost reimbursement subcontracts exceeding \$100,000) . . . . .</i>	30
52.222-4 (FD)	<b>CONTRACT WORK HOURS AND SAFETY STANDARDS ACT -- OVERTIME COMPENSATION (JUL 1995)</b> <i>(Applies to subcontracts exceeding \$100,000 that require or involve the employment of laborers or mechanics) . . . . .</i>	31
52.222-6 (FD)	<b>DAVIS-BACON ACT (FEB 1995)</b> <i>(Applies to construction subcontracts exceeding \$2,000) . . . . .</i>	32
52.222-7	<b>WITHHOLDING OF FUNDS (FEB 1988)</b> <i>(Applies to construction subcontracts exceeding \$2,000) . . . . .</i>	34
52.222-8	<b>PAYROLLS AND BASIC RECORDS (FEB 1988)</b> <i>(Applies to construction subcontracts exceeding \$2,000) . . . . .</i>	34
52.222-9	<b>APPRENTICES AND TRAINEES (FEB 1988)</b> <i>(Applies to construction subcontracts exceeding \$2,000) . . . . .</i>	35
52.222-10	<b>COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)</b> <i>(Applies to construction subcontracts exceeding \$2,000) . . . . .</i>	37

**APPENDIX B-00  
INDEX**

<b><u>DERIVED FROM FAR NUMBER</u></b>	<b><u>TITLE</u></b>	<b><u>PAGE</u></b>
52.222-11	<b>LOWER-TIER SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)</b> <i>(Applies to construction subcontracts exceeding \$2,000) .....</i>	37
52.222-12	<b>SUBCONTRACT TERMINATION - DEBARMENT (FEB 1988)</b> <i>(Applies to construction subcontracts exceeding \$2,000) .....</i>	37
52.222-13	<b>COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)</b> <i>(Applies to construction subcontracts exceeding \$2,000) .....</i>	38
52.222-14	<b>DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)</b> <i>(Applies to construction subcontracts exceeding \$2,000) .....</i>	38
52.222-15	<b>CERTIFICATION OF ELIGIBILITY (FEB 1988)</b> <i>(Applies to construction subcontracts exceeding \$2,000) .....</i>	38
52.222-20	<b>WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)</b> <i>(Applies to furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000) .....</i>	38
52.222-26 (FD)	<b>EQUAL OPPORTUNITY (FEB 1999) .....</b>	39
52.222-27	<b>AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (APR 1984)</b> <i>(Applies to construction subcontracts exceeding \$100,000) .....</i>	40
52.222-35 (FD)	<b>AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)</b> <i>(Applies to subcontracts exceeding \$10,000) .....</i>	45
52.222-36 (FD)	<b>AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)</b> <i>(Applies to subcontracts exceeding \$10,000) .....</i>	48
52.222-37 (FD)	<b>EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999)</b> <i>(Applies to subcontracts exceeding \$10,000) .....</i>	49
52.222-41 (FD)	<b>SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)</b> <i>(Applies to subcontracts exceeding \$2,500) .....</i>	50

**APPENDIX B-00**

## INDEX

<b><u>DERIVED FROM FAR NUMBER</u></b>	<b><u>TITLE</u></b>	<b><u>PAGE</u></b>
52.225-3	<b>BUY AMERICAN ACT--NORTH AMERICAN FREE TRADE AGREEMENT--ISRAELI TRADE ACT--BALANCE OF PAYMENTS PROGRAM (FEB 2000)</b> .....	58
52.225-5	<b>BUY AMERICAN ACT --CONSTRUCTION MATERIALS (JUN 1997)</b> <i>(Applies to construction subcontracts)</i> .....	59
52.227-1 (FD)	<b>AUTHORIZATION AND CONSENT (JUL 1995) AND ALTERNATES I AND II (APR 1989)</b> .....	62
52.227-2	<b>NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)</b> <i>(Applies to construction, research, development or demonstration subcontracts exceeding \$100,000)</i> .....	63
52-227-3	<b>PATENT INDEMNITY (APR 1984) AND ALTERNATES I, II, AND III (APR 1989)</b> <i>(The provisions of this clause shall not be applicable if this award is for the conduct of research, development, or demonstration)</i> .....	63
52.227-4	<b>PATENT INDEMNITY -- CONSTRUCTION SUBCONTRACTS (APR 1984)</b> <i>(Applies to construction subcontracts)</i> .....	65
52.228-2	<b>ADDITIONAL BOND SECURITY (OCT 1997)</b> .....	65
52.228-5	<b>INSURANCE - WORK ON A GOVERNMENT INSTALLATION (SPECIAL MAY 1999)</b> <i>(Applies to fixed price subcontracts exceeding \$100,000; where the work is to be performed on a Government Installation or Government Property is included in the subcontract.)</i> .....	66
52.228-7	<b>INSURANCE - LIABILITY TO THIRD PERSONS (SPECIAL MAY 1999)</b> <i>(Applies to cost reimbursement subcontracts)</i> .....	66
52.229-3	<b>FEDERAL, STATE, AND LOCAL TAXES (COMPETITIVE SUBCONTRACT) (JAN 1991)</b> <i>(Applies to fixed price subcontracts exceeding \$100,000)</i> .....	69

## APPENDIX B-00 INDEX

<b><u>DERIVED FROM FAR NUMBER</u></b>	<b><u>TITLE</u></b>	<b><u>PAGE</u></b>
52.229-4	<b>FEDERAL, STATE, AND LOCAL TAXES (NONCOMPETITIVE SUBCONTRACTS) (JAN 1991)</b> <i>(Applies to fixed price subcontracts exceeding \$100,000)</i> .....	70
52.229-5	<b>TAXES -- SUBCONTRACTS PERFORMED IN U.S. POSSESSIONS OR PUERTO RICO (APR 1984)</b> .....	71
52.229-6	<b>TAXES -- FOREIGN FIXED PRICE CONTRACTS (JAN 1991)</b> <i>(Applies to subcontracts exceeding \$100,000)</i> .....	71
52.232-5	<b>PAYMENTS UNDER FIXED PRICE CONSTRUCTION SUBCONTRACTS (MAY 1997)</b> <i>(Applies to construction subcontracts)</i> .....	73
52.232-20	<b>LIMITATION OF COST (APR 1984)</b> <i>(Applies to fully funded, cost reimbursement subcontracts)</i> .....	77
52.232-22	<b>LIMITATION OF FUNDS (APR 1984)</b> <i>(Applies to incrementally funded, cost reimbursement subcontracts)</i> .....	78
52.236-2	<b>DIFFERING SITE CONDITIONS (APR 1984)</b> <i>(Applies to construction subcontracts)</i> .....	80
52.236-3	<b>SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)</b> <i>(Applies to construction subcontracts)</i> .....	81
52.236-5	<b>MATERIAL AND WORKMANSHIP (APR 1984)</b> <i>(Applies to construction subcontracts)</i> .....	81
52.236-6	<b>SUPERINTENDENCE BY THE SUBCONTRACTOR (APR 1984)</b> <i>(Applies to construction subcontracts)</i> .....	82
52.236-7	<b>PERMITS AND RESPONSIBILITIES (NOV 1991)</b> <i>(Applies to construction subcontracts)</i> .....	82
52.236-8	<b>OTHER CONTRACTS/SUBCONTRACTS (APR 1984)</b> <i>(Applies to construction subcontracts)</i> .....	83
52.236-9	<b>PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)</b> <i>(Applies to construction subcontracts)</i> .....	83

**APPENDIX B-00  
INDEX**

<b><u>DERIVED FROM FAR NUMBER</u></b>	<b><u>TITLE</u></b>	<b><u>PAGE</u></b>
52.236-10	<b>OPERATIONS AND STORAGE AREAS (APR 1984)</b> <i>(Applies to construction subcontracts)</i> .....	83
52.236-11	<b>USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)</b> <i>(Applies to construction subcontracts)</i> .....	84
52.236-12	<b>CLEANING UP (APR 1984)</b> <i>(Applies to construction subcontracts)</i> .....	84
52.236-13	<b>ACCIDENT PREVENTION (NOV 1991) AND ALTERNATE I (NOV 1991)</b> <i>(Applies to construction subcontracts)</i> .....	84
52.236-14	<b>AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)</b> <i>(Applies to construction subcontracts to be performed on a NREL/Government facility)</i> .....	86
52.236-15	<b>SCHEDULES FOR CONSTRUCTION SUBCONTRACTS (APR 1984)</b> <i>(Applies to construction subcontracts exceeding \$100,000)</i> .....	86
52.236-21	<b>SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997) AND ALTERNATE I (APR 1984)</b> <i>(Applies to construction subcontracts)</i> .....	87
52.236-22	<b>DESIGN WITHIN FUNDING LIMITATIONS (APR 1984)</b> <i>(Applies to architect-engineer subcontracts)</i> .....	88
52.236-23	<b>RESPONSIBILITY OF THE ARCHITECT-ENGINEER SUBCONTRACTOR (APR 1984)</b> <i>(Applies to architect-engineer subcontracts)</i> .....	89
52.236-24	<b>WORK OVERSIGHT IN ARCHITECT-ENGINEER SUBCONTRACTS (APR 1984)</b> <i>(Applies to architect-engineer subcontracts)</i> .....	90
52.236-25	<b>REQUIREMENTS FOR REGISTRATION OF DESIGNERS (APR 1984)</b> <i>(Applies to architect-engineer subcontracts)</i> .....	90
52.242-13	<b>BANKRUPTCY (JUL 1995)</b> <i>(Applies to subcontracts exceeding \$100,000)</i> .....	90
52.242-14	<b>SUSPENSION OF WORK (APR 1984)</b> <i>(Applies to construction and architect-engineer subcontracts)</i> .....	90

**APPENDIX B-00  
INDEX**

**DERIVED FROM**

<b><u>FAR NUMBER</u></b>	<b><u>TITLE</u></b>	<b><u>PAGE</u></b>
52.242-15	<b>STOP WORK ORDER (AUG 1989) AND ALTERNATE 1 - COST REIMBURSEMENT (AUG 1989) .....</b>	91
52.243-1	<b>CHANGES - FIXED PRICE (AUG 1987) AND ALTERNATES I THROUGH V (APR 1984) .....</b>	92
52.243-2	<b>CHANGES - COST REIMBURSEMENT (AUG 1987) ALTERNATE V - RESEARCH AND DEVELOPMENT (AUG 1987) ....</b>	95
52.243-3	<b>CHANGES - TIME-AND-MATERIALS OR LABOR-HOURS (AUG 1987) .....</b>	95
52.243-4	<b>CHANGES (FIXED PRICE CONSTRUCTION) (AUG 1987) (Applies to construction subcontracts exceeding \$100,000) .....</b>	96
52.244-2	<b>LOWER-TIER SUBCONTRACTS (AUG 1998) (Applies to all cost reimbursement subcontracts, and letter; fixed price; time and material; and labor hour subcontracts exceeding \$100,000) .....</b>	97
52.244-4	<b>LOWER-TIER SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (ARCHITECT-ENGINEER SERVICES) (AUG 1998) .....</b>	100
52.244-6	<b>SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1998) .....</b> <i>(Applies to solicitations and subcontracts for supplies or services other than commercial items.)</i>	100
52.245-2	<b>GOVERNMENT PROPERTY - (FIXED PRICE SUBCONTRACTS) (DEC 1989) AND ALTERNATE II (JUL 1985) (Use Alternate II for educational institutions or other nonprofit institutions)</b>	101
52.245-3	<b>IDENTIFICATION OF GOVERNMENT-FURNISHED PROPERTY (APR 1984) (Applies to construction subcontracts if the subcontract Schedule, the specifications, or the drawings identify any Government-furnished property. The term "Schedule" as it appears in this clause shall hereafter have the meaning "schedule, specifications, or drawings") .....</b>	108
52.245-4	<b>GOVERNMENT-FURNISHED PROPERTY (SHORT FORM) (APR 1984) (Applies to fixed price; time and material; labor hour subcontracts where GFP acquisition cost is \$100,000 or less) .....</b>	109

**APPENDIX B-00  
INDEX**

**DERIVED FROM**



<u>FAR NUMBER</u>	<u>TITLE</u>	<u>PAGE</u>
52.245-5	<b>GOVERNMENT PROPERTY -- TIME-AND-MATERIAL, OR LABOR-HOUR SUBCONTRACTS (JAN 1986)</b> <i>(Applies to cost reimbursable subcontracts exceeding \$100,000)</i> .....	110
52.246-2	<b>INSPECTION OF SUPPLIES -- FIXED PRICE (AUG 1996)</b> <i>(This clause applies to subcontracts for supplies or services that involve furnishing supplies. See 52.246-4 for subcontracts for services)</i> .....	115
52.246-4	<b>INSPECTION OF SERVICES -- FIXED PRICE (AUG 1996)</b> <i>(This clause applies to subcontracts for services or supplies that involve furnishing services. See 52.246-2 for subcontracts for supplies)</i> .....	118
52.246-5	<b>INSPECTION OF SERVICES -- COST-REIMBURSEMENT (APR 1984)</b>	119
52.246-6	<b>INSPECTION - TIME-AND MATERIAL AND LABOR-HOUR (JAN 1986)</b> .....	119
52.246-9	<b>INSPECTION OF RESEARCH AND DEVELOPMENT (SHORT FORM) (APR 1984)</b> .....	121
52.246-12	<b>INSPECTION OF CONSTRUCTION (AUG 1996)</b> <i>(Applies to construction subcontracts)</i> .....	121
52.246-21	<b>WARRANTY OF CONSTRUCTION (MAR 1994) AND ALTERNATE I (APR 1984)</b> <i>(Applies to construction subcontracts)</i> .....	123
52.247-63 (FD)	<b>PREFERENCE FOR U.S.- FLAG AIR CARRIERS (JAN 1997)</b> .....	124
52.249-1 (FD)	<b>TERMINATION FOR CONVENIENCE OF NREL/GOVERNMENT (FIXED PRICE) (SHORT FORM) (APR 1984)</b> <i>(Applies to fixed price subcontracts of \$100,000 or less, except subcontracts for research and development work with educational or nonprofit institutions; or subcontracts for architect-engineer services; or subcontracts for facilities)</i> ..	125
52.249-2 (FD)	<b>TERMINATION FOR CONVENIENCE OF NREL/GOVERNMENT (FIXED PRICE) (SEP 1996)</b> <i>(Applies to fixed price subcontracts exceeding \$100,000, except subcontracts for research and development work with educational or nonprofit institutions; or subcontracts for architect-engineer services; or subcontracts for facilities)</i>	125

**APPENDIX B-00  
INDEX**

<u>DERIVED FROM FAR NUMBER</u>	<u>TITLE</u>	<u>PAGE</u>
------------------------------------	--------------	-------------

52.249-4 (FD)	<b>TERMINATION FOR CONVENIENCE OF NREL/GOVERNMENT -- (SERVICES) (SHORT FORM) (APR 1984)</b> .....	129
52.249-5 (FD)	<b>TERMINATION FOR CONVENIENCE OF NREL/GOVERNMENT (EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS) (SEP 1996)</b> .....	129
52.249-6 (FD)	<b>TERMINATION - (COST-REIMBURSEMENT) (SEP 1996) AND ALTERNATE IV - (TIME-AND-MATERIALS OR LABOR-HOUR) (SEP 1996)</b> <i>(Applies to cost reimbursement subcontracts except subcontracts for research and development work with educational or nonprofit institutions)</i> ..	131
52.249-7 (FD)	<b>TERMINATION (FIXED PRICE ARCHITECT-ENGINEER) (APR 1984)</b> .....	137
52.249-8 (FD)	<b>DEFAULT (FIXED PRICE SUPPLY AND SERVICE) (APR 1984)</b> .....	137
52.249-9 (FD)	<b>DEFAULT (FIXED PRICE RESEARCH AND DEVELOPMENT) (APR 1984)</b> <i>(Applies to research and development subcontracts except subcontracts with educational or nonprofit institutions on a no-profit basis)</i> .....	139
52.249-10 (FD)	<b>DEFAULT (FIXED PRICE CONSTRUCTION) (APR 1984)</b> <i>(Applies to construction subcontracts)</i> .....	141
52.249-14 (FD)	<b>EXCUSABLE DELAYS (APR 1984)</b> .....	142
952.227-9 (FD)	<b>REFUND OF ROYALTIES (FEB 1995)</b> .....	143
952.236-71	<b>INSPECTION IN ARCHITECT-ENGINEER SUBCONTRACTS (APR 1994)</b> <i>(Applies to architect-engineer subcontracts)</i> .....	144
952.247-70 (FD)	<b>FOREIGN TRAVEL (FEB 1997)</b> .....	144
970.5204-2 (FD)	<b>INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (JUN 1997)</b> <i>(Applies to subcontracts that involve complex or hazardous work that is to be performed on a Government-owned or -leased facility.)</i> .....	144

## APPENDIX B-00 INDEX

<b><u>DERIVED FROM</u></b>	<b><u>TITLE</u></b>	<b><u>PAGE</u></b>
<b><u>DEAR NUMBER</u></b>		

970.5204-9 (FD)	<b>ACCOUNTS, RECORDS, AND INSPECTION (JUN 1996)</b> .....	147
970.5204-19 (FD)	<b>PRINTING CLAUSE FOR SUBCONTRACTS (APR 1984)</b> .....	148
970.5204-21 (FD)	<b>PROPERTY</b> <i>(Applies to cost reimbursement subcontracts)</i> .....	149
970.5204-23	<b>TAXES (APR 1984)</b> .....	154
970.5204-29	<b>PERMITS OR LICENSES (APR 1984)</b> .....	154
970.5204-79 (FD)	<b>ACCESS TO AND OWNERSHIP OF RECORDS (JUNE 1997)</b> <i>(Applies to cost reimbursement subcontracts)</i> .....	155
SPECIAL	<b>ACCESS SECURITY (APR 1999)</b> <i>(Applies to all subcontracts)</i> .....	156

## CLAUSES

### **CLAUSE - PROHIBITION OF ASSIGNMENT (SPECIAL) (APR 1997)**

- A. Neither this subcontract nor any interest therein nor claim thereunder shall be assigned or transferred by the Subcontractor except as expressly authorized in writing by the NREL Subcontract Administrator.
- B. When directed by DOE, the NREL Division of Midwest Research Institute may assign all its rights and obligations under this subcontract to DOE or its designee.

### **CLAUSE - DISPUTES (SPECIAL) (APR 1997)**

- A. The parties agree that the appropriate forum for resolution of any dispute or claim pertaining to this subcontract shall be a court of competent jurisdiction as follows:
  - 1. Subject to paragraph (A)(2) of this clause, any such litigation shall be brought and prosecuted exclusively in Federal District Court; with venue in the United States District Court of Colorado in Denver, Colorado.
  - 2. Provided, however, that in the event that the requirements for jurisdiction in any Federal District Court are not presented, such litigation shall be brought in a court of competent jurisdiction in the county of Jefferson and State of Colorado.
- B. Any substantive issue of law in such dispute, claim, or litigation shall be determined in accordance with the body of applicable Federal law relating to the interpretation and application of clauses derived from Federal Acquisition Regulations. If there is no applicable Federal law, the law of the State of Colorado shall apply in the determination of such issues. Nothing in this clause shall grant to the Subcontractor by implication any statutory rights or remedies not expressly set forth in this subcontract.
- C. There shall be no interruption in the prosecution of the work, and the Subcontractor shall proceed diligently with the performance of this subcontract pending final resolution of any dispute, claim, or litigation arising under or related to this subcontract between the parties hereto or between the Subcontractor and lower-tier subcontractors or suppliers.
- D. The Contract Disputes Act of 1978 (41 U.S.C. Sections 601-613) shall not apply to this subcontract; provided, however, that nothing in this clause shall prohibit NREL, in its sole discretion, from sponsoring a claim of the Subcontractor for resolution under the provision of its prime contract with DOE. In the event that NREL so sponsors a claim at the request of the Subcontractor, the Subcontractor shall be bound by the decision of the cognizant DOE Contracting Officer to the same extent and in the same manner as NREL.
- E. Any disputes relative to intellectual property matters will be governed by other provisions of this subcontract.

#### **CLAUSE - SECURITY REQUIREMENTS (SPECIAL) (JUL 1998)**

- A. Specific controls are established at NREL to govern access by employees, official visitors, persons accompanying employees, families, and/or friends to the site. The introduction of certain "controlled" commodities and/or activities is prohibited. Included in this category are firearms, dangerous weapons, alcoholic beverages, narcotics, explosives, and livestock. NREL and its land is closed to all hunting.
- B. Subcontractors are to advise the Technical Monitor promptly of any non-routine events, occurrences, incidents, accidents, etc., particularly in situations such as lost time accidents and ambulance runs.
- C. The Subcontractor is solely responsible for the security of the materials and equipment. Any security system it may desire to use, fences, etc., is to be coordinated with the Technical Monitor.
- D. The Subcontractor is responsible for coordinating vehicle parking requirements needed to perform the construction effort with the Technical Monitor.
- E. All persons entering NREL sites must display a valid NREL identification badge. The Subcontractor is responsible for coordinating badge requirements for all its employees or lower-tier subcontractor's employees and for ensuring the return of all issued badges for entrance to the performance site.

#### **CLAUSE - DEFINITIONS (SPECIAL) (JUL 1998)**

***Derived from FAR 52.202-1 (OCT 1995)***

- A. "Head of the agency" also called "agency head") or "Secretary" means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency; and the term "authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.
- B. "Commercial component" means any component that is a commercial item.
- C. "Commercial item" means --
  - 1. Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that --
    - (i) Has been sold, leased, or licensed to the general public; or
    - (ii) Has been offered for sale, lease, or license to the general public;
  - 2. Any item that evolved from an item described in paragraph (C)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a government solicitation;

3. Any item that would satisfy a criterion expressed in paragraphs (C)(1) or (C)(2) of this clause, but for --
    - (i) Modifications of a type customarily available in the commercial marketplace; or
    - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
  4. Any combination of items meeting the requirements of paragraphs (C)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;
  5. Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (C)(1), (2), (3), or (4) of this clause, and if the source of such services --
    - (i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
    - (ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;
  6. Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;
  7. Any item, combination of items, or service referred to in subparagraphs (C)(1) through (C)(6), notwithstanding the fact that the item, combination or items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of the subcontractor; or
  8. A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and Local Governments.
- D. "Component" means any item supplied to the Federal Government as part of an end item or of another component.
- E. "Nondevelopmental item" means --

1. Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local Government, or a foreign Government with which the United States has a mutual defense cooperation agreement;
  2. Any item described in paragraph (E)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or
  3. Any item of supply being produced that does not meet the requirements of paragraph (E)(1) or (E)(2) solely because the item is not in use.
- F. "DOE Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the DOE Contracting Officer acting within the limits of their authority as delegated by the DOE Contracting Officer.
- G. Except as otherwise provided in this subcontract, the term "lower-tier subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this subcontract.
- H. The term "DOE" means the Department of Energy and "FERC" means the Federal Energy Regulatory Commission.
- I. The term "NREL" means the National Renewable Energy Laboratory Division of the Midwest Research Institute, a not-for-profit Missouri Corporation, and includes its successors and assigns of the NREL Division of Midwest Research Institute. The NREL facility is a Department of Energy-owned national laboratory, operated and managed under Contract No. DE-AC36-98-GO10337 by the NREL Division of the Midwest Research Institute.
- J. The term "Subcontractor" as used herein includes lower-tier subcontractors, independent contractors, and all other classes of persons performing any type of work under this subcontract.

**CLAUSE - YEAR 2000 CERTIFICATION AND WARRANTY OF INFORMATION  
TECHNOLOGY PRODUCTS AND SERVICES (SPECIAL)(FEB 1999)**  
*(Applies to subcontracts and purchase orders for information technology products or services)*

A. Definitions

1. "Year 2000 Compliance," as used in this clause, means that the information technology products and services delivered or developed under this subcontract/purchase order accurately process date/time data from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, and leap year calculations, to the extent that other information technology, used in combination with the information technology being delivered or developed under this subcontract/purchase order, properly exchanges date/time data with it.
2. "Information technology products and services" as used in this clause, include, but are not limited to, hardware, software, and/or firmware and embedded systems or any other electro-mechanical or processor-based systems or services.

3. "Date/time data," as used in this clause, includes but is not limited to, calculating, comparing, and sequencing.

B. Certification

The delivery or development of information technology products or services by the Subcontractor/Supplier shall constitute constructive certification that the information technology products or services under this subcontract/purchase order demonstrate Year 2000 Compliance.

C. Warranty

The Subcontractor/Supplier warrants that each commercial or noncommercial information technology product or service delivered or developed under this subcontract/purchase order is Year 2000 Compliant. If the subcontract/purchase order requires that specific information technology products or services must perform as a system in accordance with the foregoing warranty, then this warranty shall apply to those products or services as a system.

D. Duration and Remedies

The duration of this warranty and the remedies available to NREL/Government for breach of this warranty shall be as defined in, and subject to: 1) the terms and limitations of the general warranty provisions of this subcontract/purchase order; or, 2) the terms and limitations of the Subcontractor's/Supplier's standard commercial warranty or warranties contained in this subcontract/purchase order.

Notwithstanding any provision to the contrary in such warranty provision(s), or in the absence of any such warranty provision(s), the remedies available to NREL/Government under this Year 2000 Compliance warranty shall include repair or replacement, at no additional cost to NREL/Government, of any information technology product or service where noncompliance is discovered and made known to the Subcontractor/Supplier in writing within ninety (90) days after acceptance. Nothing in this warranty shall be construed to limit any rights or remedies NREL/Government may otherwise have under this subcontract/purchase order with respect to defects other than Year 2000 compliance.

E. Subcontractor/Supplier as Distributor

If the Subcontractor/Supplier is a distributor of technology information products obtained from third party manufacturers, the Subcontractor/Supplier agrees to obtain from the third party manufacturers certifications and warranties that substantially conform to the requirements of this clause.

F. Lower-tier Subcontracts/Purchase Orders

The Subcontractor/Supplier agrees to insert terms that conform substantially to the language of this clause, including this paragraph F, in all lower-tier subcontracts/purchase orders under this subcontract/purchase order.



**CLAUSE - RESTRICTIONS ON LOWER-TIER SUBCONTRACTOR SALES  
TO NREL/GOVERNMENT (JUL 1995)**

***Derived from FAR 52.203-6***

***(Applies to subcontracts exceeding \$100,000)***

- A. Except as provided in (B) of this clause, the Subcontractor shall not enter into any agreement with an actual or prospective lower-tier subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such lower-tier subcontractors directly to NREL/Government of any item or process (including computer software) made or furnished by the lower-tier subcontractor under this subcontract or under any follow-on production subcontract.
- B. The prohibition in (A) of this clause does not preclude the Subcontractor from asserting rights that are otherwise authorized by law or regulation.
- C. The Subcontractor agrees to incorporate the substance of this clause, including this paragraph (C), in all lower-tier subcontracts under this subcontract which exceed \$100,000.

**CLAUSE - ANTI-KICKBACK PROCEDURES (JUL 1995)**

***Derived from FAR 52.203-7 (FD)***

***(Applies to subcontracts exceeding \$100,000)***

- A. Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any Prime Contractor, Prime Contractor employee, Subcontractor, or Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a Prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a Prime Contractor or Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the Prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and

(2) includes any person who offers to furnish or furnishes general supplies to the Prime Contractor or a higher-tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a Subcontractor.

- B. The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from --
1. Providing or attempting to provide or offering to provide any kickback;
  2. Soliciting, accepting, or attempting to accept any kickback; or
  3. Including, directly or indirectly, the amount of any kickback in the contract price charged by a Prime Contractor to the United States or in the contract price charged by a Subcontractor to a Prime Contractor or higher-tier subcontractor.
- C.
1. The Subcontractor shall have in place and follow reasonable procedures designed to prevent and detect violations described in paragraph (B) of this clause in its own operations and direct business relationships.
  2. When the Subcontractor has reasonable grounds to believe that a violation described in paragraph (B) of this clause may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the DOE inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
  3. The Subcontractor shall cooperate fully with any Federal agency and/or NREL investigating a possible violation described in paragraph (B) of this clause.
  4. The DOE Contracting Officer may --
    - (i) Offset the amount of the kickback against any monies owed by NREL under this subcontract and/or
    - (ii) Direct that the Subcontractor withhold from sums owed the lower-tier subcontractor the amount of the kickback. The DOE Contracting Officer may order that monies withheld under subdivision (C)(4)(ii) of this clause be paid over to NREL or the Government unless NREL or the Government has already offset those monies under subdivision (C)(4)(i) of this clause. In either case, the Subcontractor shall notify the NREL Subcontract Administrator when the monies are withheld.
  5. The Subcontractor agrees to incorporate the substance of this clause, including subparagraph (C)(5) but excepting subparagraph (C)(1), in all lower-tier subcontracts under this subcontract which exceed \$100,000.

**CLAUSE - LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN  
FEDERAL TRANSACTIONS (JUN 1997)**

***Derived from FAR 52-203-12***

***(Applies to subcontracts exceeding \$100,000)***

A. Definitions.

"Agency," as used in this clause, means executive agency as defined in FAR 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

1. The awarding of any Federal contract.
2. The making of any Federal grant.
3. The making of any Federal loan.
4. The entering into of any cooperative agreement.
5. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local Government," as used in this clause, means a unit of Government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a Local Government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

1. An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
2. A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
3. A special Government employee, as defined in section 202, Title 18, United States Code.

4. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and Local Government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Subcontractor and all lower-tier subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for one hundred and thirty (130) working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

#### B. Prohibitions.

1. Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
2. The Act also requires Subcontractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal

transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

3. The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

- a. The prohibition on the use of appropriated funds, in subparagraph (B)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
- b. For purposes of subdivision (B)(3)(i)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
- c. The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:
  1. Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.
  2. Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- d. The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action --
  1. Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
  2. Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
  3. Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub.L.95-507, and subsequent amendments.
- e. Only those services expressly authorized by subdivision (B)(3)(i)(a) of this clause are permitted under this clause.

(ii) Professional and technical services.

- a. The prohibition on the use of appropriated funds, in subparagraph (B)(1) of this clause, does not apply in the case of --
  1. A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
  2. Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- b. For purposes of subdivision (B)(3)(ii)(a) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under

this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

- c. Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- d. Only those services expressly authorized by subdivisions (B)(3)(ii)(a)(1) and (2) of this clause are permitted under this clause.
- e. The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

C. Disclosure.

1. The Subcontractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (B)(1) of this clause, if paid for with appropriated funds.
2. The Subcontractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (C)(1) of this clause. An event that materially affects the accuracy of the information reported includes--
  - (i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
  - (ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
  - (iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
3. The Subcontractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.
4. All lower-tier subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the Subcontractor. The Subcontractor shall submit all disclosures to the NREL Subcontract Administrator at the end of the calendar quarter in which the disclosure form is submitted by the Subcontractor. Each lower-tier subcontractor certification shall be retained in the subcontract file of the awarding Subcontractor.

D. Agreement.

The Subcontractor agrees not to make any payment prohibited by this clause.

E. Penalties.

1. Any person who makes an expenditure prohibited under paragraph (A) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (B) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
2. Subcontractors may rely without liability on the representation made by their lower-tier subcontractors in the certification and disclosure form.

F. Cost allowability.

Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

**CLAUSE - COMMERCIAL ITEMS - SUBCONTRACT TERMS AND CONDITIONS (MAY1999)**  
***Derived from FAR 52-212-4***

A. Inspection/Acceptance.

The Subcontractor shall only tender for acceptance those items that conform to the requirements of this subcontract. NREL/Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. NREL/Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. NREL/Government must exercise its post acceptance rights--

1. Within a reasonable time after the defect was discovered or should have been discovered; and
2. Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

B. Assignment.

The Subcontractor or its assignee's rights to be paid amounts due as a result of performance of this subcontract, may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727).

C. Changes.

Changes in the terms and conditions of this subcontract may be made only by written agreement of the parties.



D. Disputes.

This subcontract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this subcontract to reach agreement on any request for equitable adjustment, claim, appeal, or action arising under or relating to this subcontract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Subcontractor shall proceed diligently with performance of this subcontract, pending final resolution of any dispute arising under the subcontract.

E. Definitions.

The clause at FAR 52.202.1, *Definitions*, is incorporated by reference.

F. Excusable delays.

The Subcontractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Subcontractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Subcontractor shall notify the NREL Subcontract Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the NREL Subcontract Administrator of the cessation of such occurrence.

G. Invoice.

The Subcontractor shall submit an original invoice and three copies (or electronic invoice, if authorized), to the address designated in the subcontract to receive invoices. An invoice must include--

1. Name and address of the Subcontractor;
2. Invoice date;
3. Subcontract number, subcontract line item number and, if applicable, the order number;
4. Description, quantity, unit of measure, unit price, and extended price of the items delivered;
5. Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of lading;
6. Terms of any prompt payment discount offered;
7. Name and address of official to whom payment is to be sent; and
8. Name, title, and phone number of person to be notified in event of defective invoice.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. Subcontractors are encouraged to assign an identification number to each invoice.

H. Patent indemnity.

The Subcontractor shall indemnify the Government, NREL, and its officers, employees, and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this subcontract, provided the Subcontractor is reasonably notified of such claims and proceedings.

I. Payment.

Payment shall be made for items accepted by NREL that have been delivered to the delivery destinations set forth in this subcontract. NREL will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. Unless otherwise provided by an addendum to this subcontract, NREL shall make payment in accordance with the clause at FAR 52.232-33, Mandatory Information for Electronic Funds Transfer Payment, which is incorporated herein by reference. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

J. Risk of loss.

Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this subcontract shall remain with the Subcontractor until, and shall pass to NREL/Government upon:

1. Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
2. Delivery of the supplies to NREL at the destination specified in the subcontract, if transportation is f.o.b. destination.

K. Taxes.

The subcontract price includes all applicable Federal, State, and Local taxes and duties.

L. Termination for NREL's or the Government's convenience.

NREL/Government reserves the right to terminate this subcontract, or any part hereof, for its sole convenience. In the event of such termination, the Subcontractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and lower-tier subcontractors to cease work. Subject to the terms of this subcontract, the Subcontractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Subcontractor can demonstrate to the satisfaction of

NREL using its standard record keeping system, have resulted from the termination. The Subcontractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give NREL/Government any right to audit the Subcontractor's records. The Subcontractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

M. Termination for cause.

NREL/Government may terminate this subcontract, or any part hereof, for cause in the event of any default by the Subcontractor, or if the Subcontractor fails to comply with any subcontract terms and conditions, or fails to provide NREL, upon request, with adequate assurances of future performance. In the event of termination for cause, NREL/Government shall not be liable to the Subcontractor for any amount for supplies or services not accepted, and the Subcontractor shall be liable to NREL for any and all rights and remedies provided by law. If it is determined that NREL improperly terminated this subcontract for default, such termination shall be deemed a termination for convenience.

N. Title.

Unless specified elsewhere in this contract, title to items furnished under this subcontract shall pass to NREL/Government upon acceptance, regardless of when or where NREL/Government takes physical possession.

O. Warranty.

The Subcontractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this subcontract.

P. Limitation of liability.

Except as otherwise provided by an express or implied warranty, the Subcontractor will not be liable to NREL for consequential damages resulting from any defect or deficiencies in accepted items.

Q. Other compliances.

The Subcontractor shall comply with all applicable Federal, State and Local laws, executive orders, rules, and regulations applicable to its performance under this subcontract.

R. Compliance with laws unique to Government contracts.

The Subcontractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistle blower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

S. Order of precedence.

Any inconsistencies in this solicitation or subcontract shall be resolved by giving precedence in the following order:

1. The schedule of supplies/services.
2. The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.
3. The clause at FAR 52.212-5.
4. Addenda to this solicitation or subcontract, including any license agreements for computer software.
5. Solicitation provisions if this is a solicitation.
6. Other paragraphs of this clause.
7. The Standard Form 1449.
8. Other documents, exhibits, and attachments.
9. The specification.

**CLAUSE - CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT  
STATUTES OR EXECUTIVE ORDERS -- COMMERCIAL ITEMS (JUL 2000)**

*Derived from FAR 52.212-5*

A. The Subcontractor agrees to comply with the following FAR clauses, which are incorporated in this subcontract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:

1. 52.222-3, Convict Labor (E.O. 11755); and
2. 52.233-3, Protest after Award (31 U.S.C. 3553).

B. The Subcontractor agrees to comply with the FAR clauses in this paragraph (B) which the NREL Subcontract Administrator has indicated as being incorporated in this subcontract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

*(NREL Subcontract Administrator shall check as appropriate.)*

\_\_\_ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402).

\_\_\_ (2) 52.219-3, Notice of Total HUBZone Small Business Set-Aside (Jan 1999).

\_\_\_ (3) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer).

\_\_\_ (4)(i) 52.219-5, Very Small Business Set-Aside (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994).

\_\_\_ (ii) Alternate I to 52.219-5.

\_\_\_ (iii) Alternate II to 52.219-5.

\_\_\_ (5) 52.219-8, Utilization of Small Business Concerns (15 U.S.C. 637 (d)(2) and (3)).

\_\_\_ (6) 52.219-9, Small Business Subcontracting Plan (15 U.S.C. 637(d)(4)).

\_\_\_ (7) 52.219-14, Limitations on Subcontracting (15 U.S.C. 637(a)(14)).

\_\_\_ (8)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

(ii)\_\_\_ Alternate I of 52.219-23.

\_\_\_ (9) 52.219-25, Small Disadvantaged Business Participation Program--Disadvantaged Status and Reporting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

\_\_\_ (10) 52.219-26, Small Disadvantaged Business Participation Program--Incentive Subcontracting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

\_\_\_ (11) 52.222-21, Prohibition of Segregated Facilities (Feb 1999)

\_\_\_ (12) 52.222-26, Equal Opportunity (E.O. 11246).

\_\_\_ (13) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).

\_\_\_ (14) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793).

\_\_\_ (15) 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).

\_\_\_ (16) 52.225-1, Buy American Act--Balance of Payments Program--Supplies (41 U.S.C. 10a - 10d).

\_\_\_ (17)(i) 52.225-3, Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program (41 U.S.C. 10a - 10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).

- \_\_\_ (ii) Alternate I of 52.225-3.
- \_\_\_ (iii) Alternate II of 52.225-3.
- \_\_\_ (18) 52.225-5, Trade Agreements (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).
- \_\_\_ (19) 52.225-13, Restriction on Certain Foreign Purchases (E.O. 12722, 12724, 13059, 13067, 13121, and 13129).
- \_\_\_ (20) 52.225-15, Sanctioned European Union Country End Products (E.O. 12849).
- \_\_\_ (21) 52.225-16, Sanctioned European Union Country Services (E.O. 12849).
- \_\_\_ (22) 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration (31 U.S.C. 3332).
- \_\_\_ (23) 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration (31 U.S.C. 3332).
- \_\_\_ (24) 52.232-36, Payment by Third Party (31 U.S.C. 3332).
- \_\_\_ (25) 52.239-1, Privacy or Security Safeguards (5 U.S.C. 552a).
- \_\_\_ (26)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241).
- \_\_\_ (ii) Alternate I of 52.247-64.

C. The Subcontractor agrees to comply with the FAR clauses in this paragraph (C), applicable to commercial services, which the NREL Subcontract Administrator has indicated as being incorporated in this subcontract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

*(NREL Subcontract Administrator check as appropriate.)*

- \_\_\_ 1. 52.222-41, Service Contract Act of 1965, As Amended (41 U.S.C. 351, et seq.).
- \_\_\_ 2. 52.222-42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).
- \_\_\_ 3. 52.222-43, Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Multiple Year and Option Subcontracts) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).
- \_\_\_ 4. 52.222-44, Fair Labor Standards Act and Service Contract Act -- Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

\_\_\_\_ 5. 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Subcontract Pursuant to Predecessor Subcontractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351, et seq.).

\_\_\_\_ (6) 52.222-50, Nondisplacement of Qualified Workers (Executive Order 12933).

D. Comptroller General Examination of Record

The Subcontractor agrees to comply with the provisions of this paragraph (D) if this subcontract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold (\$100,000), and does not contain the clause at FAR 52.215-2, Audit and Records -- Negotiation.

1. The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Subcontractor's directly pertinent records involving transactions related to this subcontract.
2. The Subcontractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until three (3) years after final payment under this subcontract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this subcontract. If this subcontract is completely or partially terminated, the records relating to the work terminated shall be made available for three (3) years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this subcontract shall be made available until such appeals, litigation, or claims are finally resolved.
3. As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Subcontractor to create or maintain any record that the Subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

E. Notwithstanding the requirements of the clauses in paragraphs (A), (B), (C) or (D) of this clause, the Subcontractor is not required to include any FAR clause, other than those listed below (and as may be required by an addenda to this paragraph to establish the reasonableness of prices under FAR Part 15), in a lower-tier subcontract for commercial items or commercial components --

1. 52.222-26, Equal Opportunity (E.O. 11246);
2. 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212);
3. 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793); and
4. 52.247-64, Preference for Privately-Owned U.S. Flag Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

**CLAUSE - AUDIT AND RECORDS -- NEGOTIATION (JUN 1999) AND ALTERNATE II (JUN 1999)**

***Derived from FAR 52.215-2 (FD)***

***(Applies to subcontracts exceeding \$100,000) (Use Alternate II of this clause for Cost-reimbursement subcontracts with State and Local Governments, educational institutions, and other nonprofit organizations)***

A. As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are written form, in the form of computer data, or in any other form.

B. Examination of Costs

If this a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable subcontract, or any combination of these, the Subcontractor shall maintain and the DOE Contracting Officer, or an authorized representative of the DOE Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this subcontract. This right of examination shall include inspection at all reasonable times of the Subcontractor's plants, or part of them, engaged in performing the subcontract.

C. Cost or pricing data

If the Subcontractor has been required to submit cost or pricing data in connection with any pricing action relating to this subcontract, the DOE Contracting Officer, or an authorized representative of the DOE Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Subcontractor's records, including computation and projections, related to --

1. The proposal for the subcontract, lower-tier subcontract, or modification;
2. The discussions conducted on the proposal(s), including those related to negotiating;
3. Pricing of the subcontract, lower-tier subcontract, or modification; or
4. Performance of the subcontract, lower-tier subcontract, or modification.

D. Comptroller General

1. The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this subcontract or a lower-tier subcontract hereunder.
2. This paragraph may not be construed to require the Subcontractor or lower-tier subcontractor to create or maintain any record that the Subcontractor or lower-tier subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.



E. Reports

If the Subcontractor is required to furnish cost, funding, or performance reports, the DOE Contracting Officer or any authorized representative of the DOE Contracting Officer, shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating --

1. The effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objectives of these reports; and
2. The data reported.

F. Availability

The Subcontractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (A), (B), (C), (D), and (E) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this subcontract or for any shorter period specified in Subpart 4.7, Subcontractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this subcontract. In addition--

1. If this subcontract is completely or partially terminated, the records relating to the work terminated shall be made available for three (3) years after any resulting final termination settlement; and
2. Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this subcontract shall be made available until such appeals, litigation, or claims are finally resolved.

G. The Subcontractor shall insert a clause containing all the terms of this clause, including this paragraph (G), in all lower-tier subcontracts under this subcontract that exceed the simplified acquisition threshold, and --

1. That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
2. For which cost or pricing data are required; or
3. That require the lower-tier subcontractor to furnish reports as discussed in paragraph (E) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the DOE Contracting Officer or NREL Subcontract Administrator under the Government prime contract.

***Alternate II (JUN 1999)***

***(For Cost-reimbursement subcontracts with State and Local Governments, educational institutions, and other non-profit organizations, the following paragraph (H) shall be added.)***

- H. The provisions of OMB Circular No. A-133, "Audits of States, Local Governments, and Non-profit Organizations," apply to this subcontract.

**CLAUSE - ALLOWABLE COST AND PAYMENT (APR 1998)**

*Derived from FAR 52.216-7*

*(For cost reimbursement subcontracts) (For educational institutions, substitute subpart 31.3; For State and Local Governments, substitute subpart 31.6; For other non-profit organizations, substitute subpart 31.7. See FAR 16.307(a))*

A. Invoicing.

NREL shall make payments to the Subcontractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the NREL Subcontract Administrator in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this subcontract and the terms of this subcontract. The Subcontractor may submit to an authorized representative of the NREL Subcontract Administrator, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this subcontract.

B. Reimbursing costs.

1. For the purpose of reimbursing allowable costs (except as provided in subparagraph (B)(2) of this section, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only --
  - (i) Those recorded costs that, at the time of the request for reimbursement, the Subcontractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the subcontract;
  - (ii) When the Subcontractor is not delinquent in paying costs of subcontract performance in the ordinary course of business, costs incurred, but not necessarily paid, for --
    - (a) Materials issued from the Subcontractor's inventory and placed in the production process for use on the subcontract;
    - (b) Direct labor;
    - (c) Direct travel;
    - (d) Other direct in-house costs; and
    - (e) Properly allocable and allowable indirect costs, as shown in the records maintained by the Subcontractor for purposes of obtaining reimbursement under Government contracts or subcontracts; and

- (iii) The amount of progress and other payments that have been paid by cash, check or other form of payment to the Subcontractor's lower-tier subcontractors under similar cost standards.
  - 2. Subcontractor contributions to any pension or other post retirement benefit, profit-sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; provided, that the Subcontractor pays the contribution to the fund within thirty (30) days after the close of the period covered. Payments made thirty (30) days or more after the close of a period shall not be included until the Subcontractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Subcontractor actually makes the payment.
  - 3. Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (G) of this clause, allowable indirect costs under this subcontract shall be obtained by applying indirect costs rates established in accordance with paragraph (D) of this clause.
  - 4. Any statements in specifications or other documents incorporated in this subcontract by reference designating performance of services or furnishing of materials at the Subcontractor's expense or at no cost to NREL shall be disregarded for purposes of cost-reimbursement under this clause.
- C. Small business concerns.
- A small business concern may be paid more often than every two (2) weeks and may invoice and be paid for recorded costs for items or services purchased directly for the subcontract, even though the concern has not yet paid for those items or services.
- D. Final indirect costs rates.
- 1. Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.
  - 2.
    - i. The Subcontractor shall submit an adequate final indirect cost rate proposal to the NREL Subcontract Administrator (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Subcontractor and granted in writing by the NREL Subcontract Administrator. The Subcontractor shall support its proposal with adequate supporting data.
    - ii. The proposed rates shall be based on the Subcontractor's actual cost experience for that period. The appropriate Government representative or NREL Subcontract Administrator and the Subcontractor shall establish the final indirect cost rates as promptly as practical after receipt of the Subcontractor's proposal.

3. The Subcontractor and the appropriate Government representative or NREL Subcontract Administrator shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify
  - (i) The agreed-upon final annual indirect cost rates,
  - (ii) The bases to which the rates apply,
  - (iii) The periods for which the rates apply,
  - (iv) Any specific indirect cost items treated as direct costs in the settlement, and
  - (v) The affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract/subcontract obligation, or specific cost allowance or disallowance provided for in this subcontract. The understanding is incorporated into this subcontract upon execution.
4. Within one hundred and twenty (120) days after settlement of the final indirect cost rates covering the year in which this subcontract is physically complete (or longer, if approved in writing by the NREL Subcontract Administrator), the Subcontractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.
5. Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

E. Billing rates.

Until final annual indirect cost rates are established for any period, NREL shall reimburse the Subcontractor at billing rates established by the NREL Subcontract Administrator, or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates --

1. Shall be the anticipated final rates; and
2. May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

F. Quick-closeout procedures.

Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

G. Audit.

At any time or times before final payment, the NREL Subcontract Administrator may have the Subcontractor's invoices or vouchers and statements of cost audited. Any payment may be

1. Reduced by amounts found by the NREL Subcontract Administrator not to constitute allowable costs; or

2. Adjusted for prior overpayments or underpayments.

H. Final payment.

1. Upon approval of a completion invoice or voucher submitted by the Subcontractor in accordance with paragraph (D)(4) of this clause, and upon the Subcontractor's compliance with all terms of the subcontract, NREL shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
2. The Subcontractor shall pay to NREL any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Subcontractor or any assignee under this subcontract, to the extent that those amounts are properly allocable to costs for which the Subcontractor has been reimbursed by NREL. Reasonable expenses incurred by the Subcontractor for securing refunds, rebates, credits, or other amount shall be allowable costs if approved by the NREL Subcontract Administrator. Before final payment under this subcontract, the Subcontractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver --
  - (i) An assignment to NREL, in form and substance satisfactory to the NREL Subcontract Administrator, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Subcontractor has been reimbursed by NREL under this subcontract; and
  - (ii) A release discharging NREL/Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except --
    - (a) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
    - (b) Claims (including reasonable incidental expenses) based upon liabilities of the Subcontractor to third parties arising out of the performance of this subcontract; provided, that the claims are not known to the Subcontractor on the date of the execution of the release, and that the Subcontractor gives notice of the claims in writing to the NREL Subcontract Administrator within 6 years following the release date or notice of final payment date, whichever is earlier; and
    - (c) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Subcontractor under the patent clauses of this subcontract, excluding, however, any expenses arising from the Subcontractor's indemnification of NREL/Government against patent liability.

**CLAUSE - FIXED FEE (MAR 1997)**

***Derived from FAR 52.216-8***

***(Applies to cost plus fixed fee subcontracts)***

- A. NREL shall pay the Subcontractor for performing this subcontract the fixed fee specified in the Schedule.
- B. Payment of the fixed fee shall be made as specified in the Schedule; **provided**, that after payment of 85 percent of the fixed fee, the NREL Subcontract Administrator may withhold further payment of fee until a reserve is set aside in an amount that the NREL Subcontract Administrator considers necessary to protect NREL's/Government's interest. This reserve shall not exceed 15 percent of the total fixed fee or \$100,000, whichever is less. The NREL Subcontract Administrator shall release 75 percent of all fee withholds under this subcontract after receipt of the certified final indirect cost rates proposal covering the year of physical completion of this subcontract, **provided** the Subcontractor has satisfied all other subcontract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The NREL Subcontract Administrator may release up to 90 percent of the fee withholds under this subcontract based on the Subcontractor's past performance related to the submission and settlement of final indirect cost rate proposals.

**CLAUSE - COST SUBCONTRACT - NO FEE (APR 1984)**

***Derived from FAR 52.216-11***

***(Applies to cost reimbursement subcontracts)***

- A. NREL shall not pay the Subcontractor a fee for performing this subcontract.
- B. After payment of 80 percent of the total estimated cost shown in the Schedule, the NREL Subcontract Administrator may withhold further payment of allowable cost until a reserve is set aside in an amount that the NREL Subcontract Administrator considers necessary to protect NREL's/Government's interest. This reserve shall not exceed one percent of the total estimated cost shown in the Schedule or \$100,000 whichever is less.

**CLAUSE - COST-SHARING SUBCONTRACT--NO FEE (APR 1984)**

***Derived from FAR 52.216-12***

***(Applies to cost sharing subcontracts)***

- A. NREL shall not pay to the Subcontractor a fee for performing this subcontract.
- B. After paying 80 percent of NREL's share of the total estimated cost of performance shown in the Schedule, the NREL Subcontract Administrator may withhold further payment of allowable cost until a reserve is set aside in an amount that the NREL Subcontract Administrator considers necessary to protect NREL's/Government's interest. This reserve shall not exceed one percent of NREL's share of the total estimated cost shown in the Schedule or \$100,000, whichever is less.

**CLAUSE - PREDETERMINED INDIRECT COST RATES (APR 1998)**

***Derived from FAR 52.216-15***

***(Applies to cost reimbursement research and development subcontracts with educational institutions when predetermined indirect cost rates are used)***

- A. Notwithstanding the Allowable Cost and Payment clause of this subcontract, the allowable indirect costs under this subcontract shall be obtained by applying predetermined indirect cost rates to bases agreed upon by the parties as specified below.
- B.
  - 1. The Subcontractor shall submit an adequate final indirect cost rate proposal to the NREL Subcontract Administrator (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Subcontractor and granted in writing by the NREL Subcontract Administrator. The Subcontractor shall support its proposal with adequate supporting data.
  - 2. The proposed rates shall be based on the Subcontractor's actual cost experience for that period. The appropriate Government representative and the NREL Subcontract Administrator shall establish the final indirect cost rates as promptly as practical after receipt of the Subcontractor's proposal.
- C. Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with FAR Subpart 31.3 in effect on the date of this subcontract.
- D. Predetermined rate agreements in effect on the date of this subcontract shall be incorporated into the subcontract Schedule. The NREL Subcontract Administrator (or cognizant Federal agency official) and Subcontractor shall negotiate rates for subsequent periods and execute a written indirect cost rate agreement setting forth the results. The agreement shall specify--
  - 1. The agreed-upon predetermined indirect cost rates,
  - 2. The bases to which the rates apply,
  - 3. The period for which the rates apply, and
  - 4. The specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

The indirect cost rate agreement shall not change any monetary ceiling, subcontract obligation, or specific cost allowance or disallowance provided for in this subcontract. The agreement is incorporated into this subcontract upon execution.

- E. Pending establishment of predetermined indirect cost rates for any fiscal year (or other period agreed to by the parties), the Subcontractor shall be reimbursed either at the rates fixed for the previous fiscal year (or other period) or at billing rates acceptable to the NREL Subcontract Administrator (or cognizant Federal agency official), subject to appropriate adjustment when the final rates for that period are established.

- F. Any failure by the parties to agree on any predetermined indirect cost rates under this clause shall not be considered a dispute within the meaning of the Disputes clause. If for any fiscal year (or other period specified in the Schedule) the parties fail to agree to predetermined indirect cost rates, the allowable indirect costs shall be obtained by applying final indirect cost rates established in accordance with the Allowable Cost and Payment clause.
- G. Allowable indirect costs for the period from the beginning of performance until the end of the Subcontractor's fiscal year (or other period specified in the Schedule) shall be obtained using the predetermined indirect cost rates and the bases shown in the Schedule.

**CLAUSE - UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 1999)**

***Derived from FAR 52.219-8 (FD)***

***(Applies to subcontracts exceeding \$100,000)***

- A. It is the policy of the United States that small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including subcontracts and lower-tier subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its Prime Contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their lower-tier subcontracts with small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women.
- B. The Subcontractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Subcontractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Subcontractor's compliance with this clause.
- C. Definitions.

As used in this subcontract--

- 1. "Small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.
- 2. "HUBZone small business concern" means a small business concern that appear on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
- 3. "Small business concern owned and controlled by socially and economically disadvantaged individuals" means an offeror that represents, as part of its offer, that-
  - (i) It has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B;



- (ii) No material change in disadvantaged ownership and control has occurred since its certification;
  - (iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
  - (iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-NET).
4. "Small business concern owned and controlled by women" means a small business concern --
- (i) Which is at least fifty one (51) percent owned by one or more women, or, in the case of any publicly owned business, at least fifty one (51) percent of the stock of which is owned by one or more women; and
  - (ii) Whose management and daily business operations are controlled by one or more women; and
- D. Subcontractors acting in good faith may rely on written representations by their lower-tier subcontractors regarding their status as a small business concern, a HUBZone small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals or a small business concern owned and controlled by women.

**CLAUSE - PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)**

*Derived from FAR 52.222-2*

*(Applies to cost reimbursement subcontracts exceeding \$100,000)*

- A. The use of overtime is authorized under this subcontract if the overtime premium does not exceed \* \_\_\_\_\_ or the overtime premium is paid for work --
- 1. Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
  - 2. By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
  - 3. To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
  - 4. That will result in lower overall costs to NREL/Government.

- B. Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall --
1. Identify the work unit; e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the NREL Subcontract Administrator to evaluate the necessity for the overtime;
  2. Demonstrate the effect that denial of the request will have on the subcontract delivery or performance schedule;
  3. Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected subcontract; and
  4. Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

\* *Insert either "zero" or the dollar amount agreed to during negotiations. The inserted figure does not apply to the exceptions in subparagraph (A)(1) through (A)(4) of the clause.*

**CLAUSE - CONTRACT WORK HOURS AND SAFETY STANDARDS ACT --  
OVERTIME COMPENSATION (JUL 1995)**

***Derived from FAR 52.222-4 (FD)***

***(Applies to subcontracts exceeding \$100,000 that require or involve the employment of laborers or mechanics)***

- A. Overtime requirements.

No Subcontractor or lower-tier subcontractor contracting for any part of the subcontract work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

- B. Violation; liability for unpaid wages; liquidated damages.

In the event of any violation of the provisions set forth in paragraph (A) of this clause, the Subcontractor and any lower-tier subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Subcontractor and lower-tier subcontractor shall be liable to the United States (in the case of work done under subcontract for the District of Columbia or a territory, to such District or to such territory), and/or NREL, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (A) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (A) of this clause.

C. Withholding for unpaid wages and liquidated damages.

The NREL Subcontract Administrator shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Subcontractor or lower-tier subcontractor under any such subcontract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Subcontractor or lower-tier subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (B) of this clause.

D. Payrolls and basic records.

1. The Subcontractor or lower-tier subcontractor shall maintain payrolls and basic payroll records during the course of subcontract work and shall preserve them for a period of three (3) years from the completion of the subcontract for all laborers and mechanics working on the subcontract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
2. The records to be maintained under paragraph (D)(1) of this clause shall be made available by the Subcontractor or lower-tier subcontractor for inspection, copying, or transcription by authorized representatives of Department of Energy, NREL, or the Department of Labor. The Subcontractor or lower-tier subcontractor shall permit such representatives to interview employees during working hours on the job.

E. Lower-tier Subcontracts.

The Subcontractor or lower-tier subcontractor shall insert in any lower-tier subcontracts exceeding \$100,000 the provisions set forth in paragraphs (A) through (E) of this clause and also a clause requiring the lower-tier subcontractors to include these provisions in any lower-tier subcontracts. The Subcontractor shall be responsible for compliance by any lower-tier subcontractor with the provisions set forth in paragraphs (A) through (E) of this clause.

**CLAUSE - DAVIS-BACON ACT (FEB 1995)**

*Derived from FAR 52.222-6 (FD)*

*(Applies to construction subcontracts exceeding \$2,000)*

- A. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto

and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Subcontractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (D) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled "Apprentices and Trainees." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (B) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Subcontractor and its lower-tier subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- B.
1. The NREL Subcontract Administrator shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the subcontract shall be classified in conformance with the wage determination. The NREL Subcontract Administrator shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:
    - (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
    - (ii) The classification is utilized in the area by the construction industry.
    - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
  2. If the Subcontractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the NREL Subcontract Administrator agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the NREL Subcontract Administrator through the DOE Contracting Officer to the Administrator of the:

Wage and Hour Division  
Employment Standards Administration  
U.S. Department of Labor  
Washington, DC 20210.

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the NREL Subcontract Administrator or will notify the NREL Subcontract Administrator within the 30-day period that additional time is necessary.

3. In the event the Subcontractor, the laborers or mechanics to be employed in the classification, or their representatives, and the NREL Subcontract Administrator do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the NREL Subcontract Administrator shall refer the questions, including the views of all interested parties and the recommendation of the NREL Subcontract Administrator, through the DOE Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the NREL Subcontract Administrator or will notify the NREL Subcontract Administrator within the 30-day period that additional time is necessary.
  4. The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (B)(2) and (B)(3) of this clause shall be paid to all workers performing work in the classification under this subcontract from the first day on which work is performed in the classification.
- C. Whenever the minimum wage rate prescribed in the subcontract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Subcontractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- D. If the Subcontractor does not make payments to a trustee or other third person, the Subcontractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Subcontractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Subcontractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

**CLAUSE - WITHHOLDING OF FUNDS (FEB 1988)**

*Derived from FAR 52.222-7*

*(Applies to construction subcontracts exceeding \$2,000)*

The NREL Subcontract Administrator shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Subcontractor under this subcontract or any other Federal contract with the same Subcontractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Subcontractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Subcontractor or any lower-tier subcontractor the full amount of wages required by the subcontract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the subcontract, the NREL Subcontract Administrator may, after written notice to the Subcontractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**CLAUSE - PAYROLLS AND BASIC RECORDS (FEB 1988)**

*Derived from FAR 52.222-8*

*(Applies to construction subcontracts exceeding \$2,000)*

- A. Payrolls and basic records relating thereto shall be maintained by the Subcontractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (D) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- B.
1. The Subcontractor shall submit weekly for each week in which any subcontract work is performed a copy of all payrolls to the NREL Subcontract Administrator. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (A) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Subcontractor is responsible for the submission of copies of payrolls by all lower-tier subcontractors.
  2. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Subcontractor or lower-tier subcontractor or his or her agent who pays or supervises the payment of the persons employed under the subcontract and shall certify --
    - (i) That the payroll for the payroll period contains the information required to be maintained under paragraph (A) of this clause and that such information is correct and complete;
    - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the subcontract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and
    - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the subcontract.
  3. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (B)(2) of this clause.
  4. The falsification of any of the certifications in this clause may subject the Subcontractor or lower-tier subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- C. The Subcontractor or lower-tier subcontractor shall make the records required under paragraph (A) of this clause available for inspection, copying, or transcription by the NREL Subcontract Administrator or authorized representatives of the NREL Subcontract Administrator or the Department of Labor. The Subcontractor or lower-tier subcontractor shall permit the NREL Subcontract Administrator or representatives of the NREL Subcontract Administrator or the Department of Labor to interview employees during working hours on the job. If the Subcontractor or lower-tier subcontractor fails to submit required records or to make them available, the NREL Subcontract Administrator may, after written notice to the Subcontractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**CLAUSE - APPRENTICES AND TRAINEES (FEB 1988)**

***Derived from FAR 52.222-9***

***(Applies to construction subcontracts exceeding \$2,000)***

- A. Apprentices.

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Subcontractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Subcontractor's or lower-tier subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

B. Trainees.

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

C. Equal employment opportunity.

The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**CLAUSE - COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)**

*Derived from FAR 52.222-10*

*(Applies to construction subcontracts exceeding \$2,000)*

The Subcontractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this subcontract.

**CLAUSE - LOWER-TIER SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)**

*Derived from FAR 52.222-11*

*(Applies to construction subcontracts exceeding \$2,000)*

- A. The Subcontractor or lower-tier subcontractor shall insert in any lower-tier subcontracts the clauses entitled *Davis-Bacon Act*; *Contract Work Hours and Safety Standards Act--Overtime Compensation*; *Apprentices and Trainees*; *Payrolls and Basic Records*; *Compliance with Copeland Act Requirements*; *Withholding of Funds*; *Lower-tier Subcontracts (Labor Standards)*; *Subcontract Termination--Debarment*; *Disputes Concerning Labor Standards*; *Compliance with Davis-Bacon and Related Act Regulations*; and *Certification of Eligibility*; and such other clauses as the NREL Subcontract Administrator may, by appropriate instructions, require, and also a clause requiring lower-tier subcontractors to include these clauses in any lower-lower-tier subcontracts. The Subcontractor shall be responsible for compliance by any lower-tier subcontractor or lower-lower-tier subcontractor with all the subcontract clauses cited in this paragraph.
- B. 1. Within fourteen (14) days after award of the subcontract, the Subcontractor shall deliver to the NREL Subcontract Administrator a completed Statement and Acknowledgement Form (SF 1413) for each lower-tier subcontract, including the lower-tier subcontractor's signed and dated acknowledgement that the clauses set forth in paragraph (A) of this clause have been included in the lower-tier subcontract.
2. Within fourteen (14) days after the award of any subsequently awarded lower-tier subcontract the Subcontractor shall deliver to the NREL Subcontract Administrator an updated completed SF 1413 for such additional subcontract.

**CLAUSE - SUBCONTRACT TERMINATION--DEBARMENT (FEB 1988)**

*Derived from FAR 52.222-12*

*(Applies to construction subcontracts exceeding \$2,000)*

A breach of the subcontract clauses entitled *Davis-Bacon Act*; *Contract Work Hours and Safety Standards Act--Overtime Compensation*; *Apprentices and Trainees*; *Payrolls and Basic Records*; *Compliance with Copeland Act Requirements*; *Lower-Tier Subcontracts (Labor Standards)*; *Compliance with Davis-Bacon and Related Act Regulations*; or *Certification of Eligibility*; may be grounds for termination of the subcontract, and for debarment as a Subcontractor and lower-tier subcontractor as provided in 29 CFR 5.12.



**CLAUSE - COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)**

***Derived from FAR 52.222-13***

***(Applies to construction subcontracts exceeding \$2,000)***

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this subcontract.

**CLAUSE - DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)**

***Derived from FAR 52.222-14***

***(Applies to construction subcontracts exceeding \$2,000)***

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this subcontract. Disputes within the meaning of this clause includes disputes between the Subcontractor (or any of its lower-tier subcontractors) and NREL, the U.S. Department of Energy, the U.S. Department of Labor, or the employees or their representatives.

**CLAUSE - CERTIFICATION OF ELIGIBILITY (FEB 1988)**

***Derived from FAR 52.222-15***

***(Applies to construction subcontracts exceeding \$2,000)***

- A. By entering into this subcontract, the Subcontractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Subcontractor's firm is a person or firm ineligible to be awarded Government contracts or subcontracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- B. No part of this subcontract shall be subcontracted to any person or firm ineligible for award of a Government contract or subcontract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- C. The penalty for making false statements is prescribed in the U.S. Criminal code, 18 U.S.C. 1001.

**CLAUSE - WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)**

***Derived from FAR 52.222-20***

***(Applies to subcontracts for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000)***

If this subcontract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C.35-45), the following terms and conditions apply:

- (a) All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.
- (b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student

learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C.40).

**CLAUSE - EQUAL OPPORTUNITY (FEB 1999)**

***Derived from FAR 52.222-26 (FD)***

- A. If, during any 12-month period (including the twelve (12) months preceding the award of this subcontract), the Subcontractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Subcontractor shall comply with subparagraphs B (1) through (11) below. Upon request, the Subcontractor shall provide information necessary to determine the applicability of this clause.
- B. During performance of this subcontract, the Subcontractor agrees as follows:
  - 1. The Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Subcontractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.
  - 2. The Subcontractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to,
    - (i) Employment,
    - (ii) Upgrading,
    - (iii) Demotion,
    - (iv) Transfer,
    - (v) Recruitment or recruitment advertising,
    - (vi) Layoff or termination,
    - (vii) Rates of pay or other forms of compensation, and
    - (viii) Selection for training, including apprenticeship.
  - 3. The Subcontractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the NREL Subcontract Administrator that explain this clause.
  - 4. The Subcontractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

5. The Subcontractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the NREL Subcontract Administrator advising the labor union or workers' representative of the Subcontractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
  6. The Subcontractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
  7. The Subcontractor shall furnish to NREL all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The subcontractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Subcontractor has filed within the 12 months preceding the date of contract award, the subcontractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.
  8. The Subcontractor shall permit access to its premises, during normal business hours, by NREL/Government or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Subcontractor shall permit NREL/Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
  9. If the OFCCP determines that the Subcontractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Subcontractor may be declared ineligible for further NREL subcontracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Subcontractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.
  10. The Subcontractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every lower-tier subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each lower-tier subcontractor or vendor.
  11. The Subcontractor shall take such action with respect to any lower-tier subcontract or purchase order as the NREL subcontract administrator may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Subcontractor becomes involved in, or is threatened with, litigation with a lower-tier subcontractor or vendor as a result of any direction, the Subcontractor may request the United States to enter into the litigation to protect the interests of the United States.
- C. Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1

**CLAUSE - AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS  
FOR CONSTRUCTION (APR 1984)**

*Derived from FAR 52.222-27*

*(Applies to construction subcontracts exceeding \$100,000)*

- A. Definitions.

"Covered area," as used in this clause, means the geographical area described in the solicitation for this subcontract.

"Director," as used in this clause, means Director, Office of Federal Contract Compliance Programs (OFCCP), United States Department of Labor, or any person to whom the Director delegates authority.

"Employer identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means --

1. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification);
  2. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
  3. Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and
  4. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).
- B. If the Subcontractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this subcontract.
- C. If the Subcontractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Subcontractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Subcontractor or lower-tier subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors at any tier toward a goal in an approved plan does not excuse any Subcontractor's or lower-tier subcontractor's failure to make good-faith efforts to achieve the plan's goals.
- D. The Subcontractor shall implement the affirmative action procedures in subparagraphs (G)(1) through (16) of this clause. The goals stated in the solicitation for this subcontract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Subcontractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Subcontractor performs construction work in a geographical

area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Subcontractor is expected to make substantially uniform progress toward its goals in each craft.

- E. Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Subcontractor has a collective bargaining agreement, to refer minorities or women shall excuse the Subcontractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.
- F. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Subcontractor during the training period, and the Subcontractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- G. The Subcontractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Subcontractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Subcontractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:
  - 1. Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Subcontractor's employees are assigned to work. The Subcontractor, if possible, will assign two or more women to each construction project. The Subcontractor shall ensure that foremen, superintendents, and other on site supervisory personnel are aware of and carry out the Subcontractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.
  - 2. Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Subcontractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - 3. Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Subcontractor by the union or, if referred back, not employed by the Subcontractor, this shall be documented in the file, along with whatever additional actions the Subcontractor may have taken.
  - 4. Immediately notify the Director when the union or unions with which the Subcontractor has a collective bargaining agreement has not referred back to the Subcontractor a minority or woman sent by the Subcontractor, or when the Subcontractor has other information that the union referral process has impeded the Subcontractor's efforts to meet its obligations.

5. Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Subcontractor's employment needs, especially those programs funded or approved by the Department of Labor. The Subcontractor shall provide notice of these programs to the sources compiled under subparagraph (G)(2) above.
6. Disseminate the Subcontractor's equal employment policy by --
  - (i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Subcontractor in meeting its subcontract obligations;
  - (ii) Including the policy in any policy manual and in collective bargaining agreements;
  - (iii) Publicizing the policy in the company newspaper, annual report, etc.;
  - (iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
  - (v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.
7. Review, at least annually, the Subcontractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all onsite supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
8. Disseminate the Subcontractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and Subcontractors with which the Subcontractor does or anticipates doing business.
9. Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Subcontractor's recruitment area and employment needs. Not later than one (1) month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
10. Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Subcontractor's workforce.

11. Validate all tests and other selection requirements where required under 41 CFR 60-3.
  12. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.
  13. Ensure that seniority practices job classifications, work assignment, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Subcontractor's obligations under this subcontract are being carried out.
  14. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  15. Maintain a record of solicitations for lower-tier subcontracts for minority and female construction Subcontractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Subcontractor's equal employment policy and affirmative action obligations.
- H. The Subcontractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (G)(1) through (16). The efforts of a contractor association, joining contractor-union, contractor-community, or similar group of which the Subcontractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (G)(1) through (16), provided the Subcontractor --
1. Actively participates in the group;
  2. Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
  3. Ensures that concrete benefits of the program are reflected in the Subcontractor's minority and female workforce participation;
  4. Makes a good-faith effort to meet its individual goals and timetables; and
  5. Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Subcontractor. The obligation to comply is the Subcontractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Subcontractor's noncompliance.
- I. A single goal for minorities and a separate single goal for women shall be established. The Subcontractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Subcontractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

- J. The Subcontractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- K. The Subcontractor shall not enter into any lower-tier subcontract with any person or firm debarred from Government contracts or subcontracts under Executive Order 11246, as amended.
- L. The Subcontractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing lower-tier subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.
- M. The Subcontractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (G) above, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Subcontractor fails to comply with requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Director shall take action as prescribed in 41 CFR 60-4.8.
- N. The Subcontractor shall designate a responsible official to --
1. Monitor all employment-related activity to ensure that the Subcontractor's equal employment policy is being carried out;
  2. Submit reports as may be required by NREL/Government; and
  3. Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.
- O. Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**CLAUSE - AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS  
OF THE VIETNAM ERA (APR 1998)**

***Derived from FAR 52.222-35 (FD)***

***(Applies to subcontracts exceeding \$10,000)***

- A. Definitions. As used in this clause --

"All employment openings" includes all positions except executive and top management, those positions that will be filled from within the Subcontractor's organization, and positions lasting three



(3) days or less. This term includes full-time employment, temporary employment of more than three (3) days' duration, and part-time employment.

"Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

"Positions that will be filled from within the Subcontractor's organization" means employment openings for which no consideration will be given to persons outside the Subcontractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Subcontractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Veteran of the Vietnam era" means a person who --

1. Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released there from with other than a dishonorable discharge; or
2. Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964 and May 7, 1975.

B. General.

1. Regarding any position for which the employee or applicant for employment is qualified, the Subcontractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as --
  - (i) Employment;
  - (ii) Upgrading;
  - (iii) Demotion or transfer;
  - (iv) Recruitment;
  - (v) Advertising;
  - (vi) Layoff or termination;
  - (vii) Rates of pay or other forms of compensation; and
  - (viii) Selection for training, including apprenticeship.

2. The Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

C. Listing openings.

1. The Subcontractor agrees to list all employment openings existing at subcontract award or occurring during subcontract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Subcontractor facility, including one not connected with performing this subcontract. An independent corporate affiliate is exempt from this requirement.
2. State and Local Government agencies holding Federal contracts or subcontracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.
3. The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Subcontractor from any requirements of Executive Orders or regulations concerning nondiscrimination in employment.
4. Whenever the Subcontractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Subcontractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts/subcontracts. The Subcontractor may advise the State system when it is no longer bound by this subcontract clause.

D. Applicability.

1. This clause does not apply to the listing of employment openings which occur and are filled outside the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

E. Postings.

1. The Subcontractor agrees to post employment notices stating
  - (i) The Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and
  - (ii) The rights of applicants and employees.

2. These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the NREL Subcontract Administrator.
3. The Subcontractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Subcontractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

F. Noncompliance.

If the Subcontractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

G. Lower-tier Subcontracts.

The Subcontractor shall include the terms of this clause in every lower-tier subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Subcontractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

**CLAUSE - AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)**

*Derived from FAR 52.222-36 (FD)*

*(Applies to subcontracts exceeding \$10,000)*

A. General.

1. Regarding any position for which the employee or applicant for employment is qualified, the Subcontractor shall not discriminate against any employee or applicant because of physical or mental disability. The Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as --
  - (i) Recruitment, advertising, and job application procedures;
  - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
  - (iii) Rates of pay or any other form of compensation and changes in compensation;
  - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - (v) Leaves of absence, sick leave, or any other leave;
  - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Subcontractor;
  - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

- (viii) Activities sponsored by the Subcontractor, including social or recreational programs; and
    - (ix) Any other term, condition, or privilege of employment.
  - 2. The Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C.793) (the Act), as amended.
- B. Postings.
- 1. The Subcontractor agrees to post employment notices stating --
    - (i) The Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
    - (ii) The rights of applicants and employees.
  - 2. These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Subcontractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Subcontractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the DOE Contracting Officer.
  - 3. The Subcontractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Subcontractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- C. Noncompliance.
- If the Subcontractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- D. Lower-tier Subcontracts.
- The Subcontractor shall include the terms of this clause in every subcontract or purchase order in excess of \$2,500 unless exempted by rules, regulations, or orders of the Secretary. The Subcontractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

**CLAUSE - EMPLOYMENT REPORTS ON DISABLED VETERANS  
AND VETERANS OF THE VIETNAM ERA (JAN 1999)**

***Derived from FAR 52.222-37 (FD)***

***(Applies to subcontracts exceeding \$10,000)***

- A. Unless the Subcontractor is a State or Local Government agency, the Subcontractor shall report at least annually, as required by the Secretary of Labor, on;
  - 1. The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the Subcontractor by job category and hiring location; and

2. The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.
- B. The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."
  - C. Reports shall be submitted no later than September 30 of each year beginning September 30, 1988.
  - D. The employment activity report required by paragraph (A)(2) of this clause shall reflect total hires during the most recent twelve (12)-month period as of the ending date selected for the employment profile report required by paragraph (A)(1) of this clause. Subcontractors may select an ending date:
    1. As of the end of any pay period during the period January through March 1st of the year the report is due, or
    2. As of December 31, if the Subcontractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
  - E. The count of veterans reported according to paragraph (A) of this clause shall be based on voluntary disclosure. Each Subcontractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Subcontractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.
  - F. Lower-tier Subcontracts.

The Subcontractor shall include the terms of this clause in every lower-tier subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

**CLAUSE - SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)**

***Derived from FAR 52.222-41 (FD)***

***(Applies to subcontracts exceeding \$2,500)***

- A. Definitions.

"Act," as used in this clause, means the Service Contract of 1965, as amended (41 U.S.C. 351, et seq.).

"Service employee," as used in this clause, means any person engaged in the performance of this subcontract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between the Subcontractor or any lower-tier subcontractor and such persons.

B. Applicability.

This subcontract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

C. Compensation.

1. Each service employee employed in the performance of this subcontract by the Subcontractor or any lower-tier subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this subcontract.
2.
  - (i) If a wage determination is attached to this subcontract, the Subcontractor shall classify any class of service employee which is not listed therein and which is to be employed under the subcontract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (C).
  - (ii) This conforming procedure shall be initiated by the Subcontractor prior to the performance of subcontract work by the unlisted class of employee. The Subcontractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the NREL Subcontract Administrator no later than 30 days after the unlisted class of employee performs any subcontract work. The NREL Subcontract Administrator shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employee's authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the NREL Subcontract Administrator within 30 days of receipt that additional time is necessary.
  - (iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the NREL Subcontract Administrator who shall promptly notify the Subcontractor of the action taken. Each affected employee shall be furnished by the Subcontractor with a written copy of such determination or it shall be posted as a part of the wage determination.
  - (iv)
    - (a) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary

administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

- (b) In the case of a subcontract modification, an exercise of an option, or extension of an existing subcontract, or in any other case where a Subcontractor succeeds a subcontract under which the classification in question was previously conformed pursuant to the paragraph (C) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the subcontract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of subcontract work by the unlisted class of employees, the Subcontractor shall advise the NREL Subcontract Administrator of the action taken but the other procedures in subdivision (C)(2)(ii) of this clause need not be followed.
- (c) No employee engaged in performing work on this subcontract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.
- (v) The wage rate and fringe benefits finally determined under this subparagraph (C)(2) of this clause shall be paid to all employees performing in the classification from the first day on which subcontract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced subcontract work shall be a violation of the Act and this subcontract.
- (vi) Upon discovery of failure to comply with subparagraph (C)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced subcontract work.

(3) Adjustment of Compensation.

If the term of this subcontract is more than one (1) year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this subcontract shall be subject to adjustment after one (1) year and not less often than once every two (2) years, under wage determinations issued by the Wage and Hour Division.

D. Obligation to Furnish Fringe Benefits.

The Subcontractor or lower-tier subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (C)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

E. Minimum Wage.

In the absence of a minimum wage attachment for this subcontract, neither the Subcontractor nor any lower-tier subcontractor under this subcontract shall pay any person performing work under this subcontract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Subcontractor or any lower-tier subcontractor of any other obligation under law or subcontract for payment of a higher wage to any employee.

F. Successor Subcontracts.

If this subcontract succeeds a subcontract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this subcontract setting forth such collectively bargained wage rates and fringe benefits, neither the Subcontractor nor any lower-tier subcontractor under this subcontract shall pay any service employee performing any of the subcontract work (regardless of whether or not such employee was employed under the predecessor subcontract), less than the wages and fringe benefits provided for in such collective bargaining agreement to which such employee would have been entitled if employed under the predecessor subcontract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. Neither the Subcontractor nor any lower-tier subcontractor may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor subcontract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Subcontractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor subcontract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits.



Such determination shall be made part of the subcontract or lower-tier subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a subcontract or lower-tier subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

G. Notification to Employees.

The Subcontractor and any lower-tier subcontractor under this subcontract shall notify each service employee commencing work on this subcontract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this subcontract, or shall post the wage determination attached to this subcontract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this subcontract.

H. Safe and Sanitary Working Conditions.

The Subcontractor or lower-tier subcontractor shall not permit any part of the services called for by this subcontract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Subcontractor or lower-tier subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Subcontractor or lower-tier subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

I. Records.

1. The Subcontractor and each lower-tier subcontractor performing work subject to the Act shall make and maintain for three (3) years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:
  - (i) For each employee subject to the Act--
    - (a) Name and address and social security number;
    - (b) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;
    - (c) Daily and weekly hours worked by each employee; and
    - (d) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.
  - (ii) For those classes of service employees not included in any wage determination attached to this subcontract, wage rates or fringe benefits determined by the

interested parties or by the Administrator or authorized representative under the terms of paragraph (C) of this clause. A copy of the report required by subdivision (C)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Subcontractor's employees which had been furnished to the Subcontractor as prescribed by paragraph (N) of this clause.

2. The Subcontractor shall also make available a copy of this subcontract for inspection or transcription by authorized representatives of the Wage and Hour Division.
3. Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this subcontract, and in the case of failure to produce these records, the NREL Subcontract Administrator, upon direction of the Department of Labor and notification to the Subcontractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.
4. The Subcontractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

J. Pay Periods.

The Subcontractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

K. Withholding of Payments and Termination of Subcontract.

The NREL Subcontract Administrator shall withhold or cause to be withheld from the Subcontractor under this or any other NREL subcontract with the Subcontractor such sums as an appropriate official of the Department of Labor requests or such sums as the NREL Subcontract Administrator decides may be necessary to pay under paid employees employed by the Subcontractor or lower-tier subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the NREL Subcontract Administrator may, after authorization or by direction of the Department of Labor and written notification to the Subcontractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the subcontract work. In such event, NREL/Government may enter into other subcontracts or arrangements for completion of the work, charging the Subcontractor in default with any additional cost.

L. Lower-tier Subcontracts.

The Subcontractor agrees to insert this clause in all lower-tier subcontracts subject to the Act.

M. Collective Bargaining Agreements Applicable to Service Employees.

If wages to be paid or fringe benefits to be furnished any service employees employed by the Subcontractor or any lower-tier subcontractor under the subcontract are provided for in a collective bargaining agreement which is or will be effective during any period in which the subcontract is being performed, the Subcontractor shall report such fact to the NREL Subcontract Administrator, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the subcontract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the subcontract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of subcontract performance such agreements shall be reported promptly after negotiation thereof.

N. Seniority List.

Not less than ten (10) days prior to completion of any subcontract being performed at a Federal facility where service employees may be retained in the performance of the succeeding subcontract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Subcontractor (predecessor) or successor (29 CFR 4.173), the incumbent Subcontractor shall furnish the NREL Subcontract Administrator a certified list of the names of all service employees on the Subcontractor's or lower-tier subcontractors' payroll during the last month of subcontract performance. Such list shall also contain anniversary dates of employment on the subcontract either with the current or predecessor Subcontractors of each such service employee. The NREL Subcontract Administrator shall turn over such list to the successor Subcontractor at the commencement of the succeeding subcontract.

O. Rulings and Interpretations.

Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

P. Subcontractor's Certification.

1. By entering into this subcontract, the Subcontractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Subcontractor's firm is a person or firm ineligible to be awarded Government contracts or subcontracts by virtue of the sanctions imposed under section 5 of the Act.
2. No part of this subcontract shall be further subcontracted to any person or firm ineligible for award of a Government contract or subcontract under section 5 of the Act.
3. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Q. Variations, Tolerances, and Exemptions Involving Employment.

Notwithstanding any of the provisions in paragraphs (B) through (O) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and

exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

1. Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).
2. The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).
3. The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

R. Apprentices.

Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the subcontract work in any craft classification shall not be greater than the ratio permitted to the Subcontractor as to his entire work force under the registered program.

S. Tips.

An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision

1. The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
2. The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

3. The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and
4. The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

T. Disputes Concerning Labor Standards.

The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this subcontract. Disputes within the meaning of this clause include disputes between the Subcontractor (or any of its lower-tier subcontractors) and the subcontracting agency, the U.S. Department of Labor, or the employees of their representatives.

**CLAUSE - BUY AMERICAN ACT–North American Free Trade Agreement–Israeli Trade Act–Balance of Payments Program (FEB 2000)**  
***Derived from FAR 52.225-3***

A. Definitions. As used in this clause--

"Component" means any item supplied to NREL as part of an end item or of another component.

"Cost of components" means--

1. For components purchased by the Subcontractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
2. For components manufactured by the Subcontractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph 1. of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic end product" means--

1. An unmanufactured end product mined or produced in the United States; or
2. An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End product" means supplies delivered under a line item of a Government contract.

"Foreign end product" means an end product other than a domestic end product.

"Israeli end product" means an article that--

1. Is wholly the growth, product, or manufacture of Israel; or

2. In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Israel into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

"North American Free Trade Agreement country" means Canada or Mexico.

"North American Free Trade Agreement country end product" means an article that--

1. Is wholly the growth, product, or manufacture of a North American Free Trade Agreement (NAFTA) country; or

2. In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

"United States" means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

- B. Components of foreign origin. Offerors may obtain from NREL a list of foreign articles that the Subcontract Administrator will treat as domestic for this subcontract.
- C. Implementation. This clause implements the Buy American Act (41 U.S.C. 10a - 10d), the North American Free Trade Agreement Implementation Act (NAFTA) (19 U.S.C. 3301 note), the Israeli Free Trade Area Implementation Act of 1985 (Israeli Trade Act) (19 U.S.C. 2112 note), and the Balance of Payments Program by providing a preference for domestic end products, except for certain foreign end products that are NAFTA country end products or Israeli end products.
- D. Delivery of end products. NREL has determined that NAFTA and the Israeli Trade Act apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Subcontractor shall deliver under this subcontract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program Certificate." If the Subcontractor specified in its offer that the Subcontractor would supply a NAFTA country end product or an Israeli end product, then the Subcontractor shall supply a NAFTA country end product, an Israeli end product or, at the Subcontractor's option, a domestic end product.

**CLAUSE - BUY AMERICAN ACT - CONSTRUCTION MATERIALS (JUN 1997)**  
***(Applies to construction subcontracts)***

- A. Definitions.

As used in this clause --

"Components," means those articles, materials, and supplies incorporated directly into construction materials.

"Construction materials," means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials or supplies. However, emergency life safety systems, such as

emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

"Domestic construction material," means --

1. An unmanufactured construction material mined or produced in the United States, or
  2. A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to subparagraph 25.202(a)(3) of the Federal Acquisition Regulation (FAR) shall be treated as domestic.
- B.
1. The Buy American Act (41 U.S.C. 10a-10d) requires that only domestic construction material be used in performing this subcontract, except as provided in paragraphs (B)(2) and (B)(3) of this clause.
  2. This requirement does not apply to the excepted construction material or components listed by NREL as follows:

---

(List applicable excepted materials or indicate "none")

3. Other foreign construction material may be added to the list in paragraph (B)(2) of this clause if NREL determines that--
  - (i) The cost would be unreasonable (the cost of a particular domestic construction material shall be determined to be unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent, unless the agency head determines a higher percentage to be appropriate);
  - (ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; and
  - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.
4. The Subcontractor agrees that only domestic construction material will be used by the Subcontractor, lower-tier subcontractors, material men, and suppliers in the performance of this subcontract, except for foreign construction materials, if any, listed in paragraph (B)(2) of this clause.

C. Request for determination.

1. Subcontractors requesting to use foreign construction material under (B)(3) of this clause shall provide adequate information for NREL evaluation of the request for a determination regarding the inapplicability of the Buy American Act. Each submission shall include a description of the foreign and domestic construction materials, including unit of measure, quantity, price, time of delivery or availability, location of the construction project, name and address of the proposed Subcontractor, and a detailed justification of the reason for use of foreign materials cited in accordance with paragraph (B)(3) of this clause. A submission based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (D) of this clause. The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
2. If NREL determines after subcontract award that an exception to the Buy American Act applies, the subcontract shall be modified to allow use of the foreign construction material, and adequate consideration shall be negotiated. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration shall not be less than the differential established in paragraph (B)(3)(i) of this clause.
3. If NREL does not determine that an exception to the Buy American Act applies, the use of that particular foreign construction material will be a failure to comply with the Act.

D. For evaluation of request under paragraph (C) of this clause based on unreasonable cost, the following information and any applicable supporting data based on the survey of suppliers shall be included in the request:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON			
<u>Construction Material</u> <u>Description</u>	<u>Unit of</u> <u>Measure</u>	<u>Quantity</u>	<u>Price</u> <u>(Dollars)*</u>
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

(List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.) (Include other applicable supporting information.)

(\*Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).)



**CLAUSE - AUTHORIZATION AND CONSENT (JUL 1995) AND ALTERNATES I AND II  
(APR 1984)**

***Derived from FAR 52-227-1 (FD)***

- A. The Government authorizes and consents to all use and manufacture, in performing this subcontract or any subcontract at any tier, of any invention described in and covered by a United States patent
1. Embodied in the structure or composition of any article the delivery of which is accepted by the NREL/Government under this subcontract or;
  2. Used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a lower-tier subcontractor with--
    - (i) Specifications or written provisions forming a part of this subcontract or
    - (ii) Specific written instructions given by the Government working through NREL directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this subcontract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.
- B. The Subcontractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any lower-tier subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

**ALTERNATE I (APR 1984)**

***Alternate I of this clause is applicable if this award is for the conduct of research, development, or demonstration***

The following is substituted for paragraph (A) of the clause:

- A. The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this subcontract or any subcontract at any tier.

**ALTERNATE II (APR 1984)**

***Alternate II of this clause is applicable if this award includes an order or lower-tier subcontract for communication services and facilities***

The following is substituted for paragraph (A) of the clause:

- A. The Government authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this subcontract for communication services and facilities for which rates, charges, and tariffs are not established by a Government regulatory body, of any invention described in and covered by a United States patent
  - 1. Embodied in the structure or composition of any article the delivery of which is accepted by the Government through NREL under this subcontract or
  - 2. Used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a lower-tier subcontractor with specifications or written provisions forming a part of this subcontract or with specific written instructions given by the DOE through NREL directing the manner of performance.

**CLAUSE - NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)**

***Derived from FAR 52.227-2***

***(Applies to construction, research, development, or demonstration subcontracts exceeding \$100,000)***

- A. The Subcontractor shall report to the DOE through NREL, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this subcontract of which the Subcontractor has knowledge.
- B. In the event of any claim or suit against NREL/Government on account of any alleged patent or copyright infringement arising out of the performance of this subcontract or out of the use of any supplies furnished or work or services performed under this subcontract, the Subcontractor shall furnish to the Government, when requested by the DOE through NREL, all evidence and information in possession of the Subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Subcontractor has agreed to indemnify the Government.
- C. The Subcontractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer lower-tier subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

**CLAUSE - PATENT INDEMNITY (APR 1984) AND ALTERNATES I, II, AND III (APR 1984)**

***Derived from FAR 52.227-3***

***(The provisions of this clause shall not be applicable if this award is for the conduct of research, development, or demonstration)***

- A. The Subcontractor shall indemnify the NREL/Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property

(hereinafter referred to as "construction work") under this subcontract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

- B. This indemnity shall not apply unless the Subcontractor shall have been informed as soon as practicable by the NREL/Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to
1. An infringement resulting from compliance with specific written instructions of the DOE through NREL directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the subcontract not normally used by the Subcontractor,
  2. An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or
  3. A claimed infringement that is unreasonably settled without the consent of the Subcontractor, unless required by final decree of a court of competent jurisdiction.

#### **ALTERNATE I (APR 1984)**

*Alternate I of this clause is not applicable to the items specifically listed and/or identified*

The following paragraph (C) is added to the clause:

- C. This patent indemnification shall not apply to the following items:

---

[List and/or identify the items to be excluded from this indemnity.]

#### **ALTERNATE II (APR 1984)**

*Alternate II of this clause is applicable to the items specifically listed and/or identified*

The following paragraph (C) is added to the clause:

- C. This patent indemnification shall cover the following items:

---

[List and/or identify the items to be included under this indemnity.]

#### **ALTERNATE III (JUL 1995)**

*Alternate III of this clause is applicable if this award includes a lower-tier subcontract for communication services and facilities*

The following paragraph is added to the clause:

- ( ) As to subcontracts at any tier for communication service, this clause shall apply only to individual communication service authorizations over the simplified acquisition threshold issued under this subcontract and covering those communications services and facilities
1. That are or have been sold or offered for sale by the Subcontractor to the public,
  2. That can be provided over commercially available equipment, or
  3. That involve relatively minor modifications.

**CLAUSE - PATENT INDEMNITY--CONSTRUCTION CONTRACTS (APR 1984)**

***Derived from FAR 52.227-4***

***(Applies to construction subcontracts)***

Except as otherwise provided, the Subcontractor agrees to indemnify NREL/Government and their officers, agents, and employees against liability, including costs and expenses, for infringement upon any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of performing this subcontract or out of the use or disposal by or for the account of NREL/Government of supplies furnished or work performed under this subcontract.

**CLAUSE - ADDITIONAL BOND SECURITY (OCT 1997)**

***Derived from FAR 52.228-2***

The Subcontractor shall promptly furnish additional security required to protect NREL/Government and persons supplying labor or materials under this subcontract if --

- A. Any surety upon any bond, or issuing financial institution for other security, furnished with this subcontract becomes unacceptable to NREL/Government;
- B. Any surety fails to furnish reports on its financial condition as required by NREL/Government;  
or
- C. The subcontract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the NREL Subcontract Administrator, or
- D. An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Subcontractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the NREL Subcontract Administrator has the right to immediately draw on the ILC.

**CLAUSE - INSURANCE--WORK ON A GOVERNMENT INSTALLATION (SPECIAL - MAY 1999)**

***Derived from FAR 52.228-5***

***(Applies to fixed price subcontracts exceeding \$100,000; where the work is to be performed on a Government Installation or Government Property is included in the subcontract.)***

- A. The Subcontractor shall, at its own expense, provide and maintain during the entire performance period of this subcontract at least the kinds and minimum amounts of insurance required in this clause.

Insurance Type	Bodily Injury		Property Damage
	Each Person	Each Occurrence	
Workers' Compensation	As required by law	As required by law	
Employer's Liability	\$100,000	\$100,000	
Comprehensive General Liability	\$500,000	\$500,000	\$100,000
Automobile Liability	\$200,000	\$500,000	\$20,000

- B. Before commencing work under this subcontract, the Subcontractor shall notify the NREL Subcontract Administrator in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting NREL's/Government's interest shall not be effective --
1. For such period as the laws of the State in which this subcontract is to be performed prescribe; or
  2. Until thirty (30) days after the insurer or the Subcontractor gives written notice to the NREL Subcontract Administrator, whichever period is longer.
- C. The Subcontractor shall insert the substance of this clause, including this paragraph (C), in lower-tier subcontracts under this subcontract that require work on a Government installation and shall require lower-tier subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the subcontract. The Subcontractor shall maintain a copy of all the lower-tier subcontractor's proofs of required insurance, and shall make copies available to the NREL Subcontract Administrator upon request.

**CLAUSE - INSURANCE--LIABILITY TO THIRD PERSONS (SPECIAL - MAY 1999)**

***Derived from FAR 52.228-7***

***(Applies to cost reimbursement subcontracts)***

- A. 1. Except as provided in subparagraph (A)(2) of this clause, the Subcontractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the NREL Subcontract Administrator may require under this subcontract.

2. The Subcontractor may, with the approval of the NREL Subcontract Administrator, maintain a self-insurance program; **provided** that, with respect to workers' compensation, the Subcontractor is qualified pursuant to statutory authority.
3. The Subcontractor shall provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in this clause, with insurers approved by the NREL Subcontract Administrator.

Insurance Type	Bodily Injury		Property Damage
	Each Person	Each Occurrence	
Workers' Compensation	As required by law	As required by law	
Employer's Liability	\$100,000	\$100,000	
Comprehensive General Liability	\$500,000	\$500,000	\$100,000
Automobile Liability	\$200,000	\$500,000	\$20,000

- B. The Subcontractor agrees to submit for the NREL Subcontract Administrator's approval, to the extent and in the manner required by the NREL Subcontract Administrator, any other insurance that is maintained by the Subcontractor in connection with the performance of this subcontract and for which the Subcontractor seeks reimbursement.
- C. The Subcontractor shall be reimbursed --
  1. For that portion
    - (i) Of the reasonable cost of insurance allocable to this subcontract, and
    - (ii) Required or approved under this clause; and
  2. For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this subcontract. These liabilities must arise out of the performance of this subcontract, whether or not caused by the negligence of the Subcontractor or of the Subcontractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by NREL/Government. These liabilities are for --
    - (i) Loss of or damage to property (other than property owned, occupied, or used by the Subcontractor, rented to the Subcontractor, or in the care, custody, or control of the Subcontractor); or
    - (ii) Death or bodily injury.
- D. NREL's/Government's liability under paragraph (C) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this subcontract shall be

construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

- E. The Subcontractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)-
1. For which the Subcontractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the subcontract;
  2. For which the Subcontractor has failed to insure or to maintain insurance as required by the NREL Subcontract Administrator; or
  3. That result from willful misconduct or lack of good faith on the part of any of the Subcontractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of --
    - (i) All or substantially all of the Subcontractor's business;
    - (ii) All or substantially all of the Subcontractor's operations at any one plant or separate location in which this subcontract is being performed; or
    - (iii) A separate and complete major industrial operation in connection with the performance of this subcontract.
- F. The provisions of paragraph (E) of this clause shall not restrict the right of the Subcontractor to be reimbursed for the cost of insurance maintained by the Subcontractor in connection with the performance of this subcontract, other than insurance required in accordance with this clause; **provided**, that such cost is allowable under the Allowable Cost and Payment clause of this subcontract.
- G. If any suit or action is filed or any claim is made against the Subcontractor, the cost and expense of which may be reimbursable to the Subcontractor under this subcontract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Subcontractor shall --
1. Immediately notify the NREL Subcontract Administrator and promptly furnish copies of all pertinent papers received;
  2. Authorize NREL/Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and
  3. Authorize NREL/Government representatives to settle or defend the claim and to represent the Subcontractor in or to take charge of any litigation, if required by the NREL/Government, when the liability is not insured or covered by bond. The Subcontractor may, at its own expense, be associated with NREL/Government representatives in any such claim or litigation.

**CLAUSE - FEDERAL, STATE, AND LOCAL TAXES (COMPETITIVE SUBCONTRACT) (JAN 1991)**

***Derived from FAR 52.229-3***

***(Applies to fixed price subcontracts exceeding \$100,000)***

- A. "Subcontract date," as used in this clause, means the date set for bid opening or, if this is a negotiated subcontract or a modification, the effective date of this subcontract or modification.

"All applicable Federal, State, and Local taxes and duties," as used in this clause, means all taxes and duties, in effect on the subcontract date, that the taxing authority is imposing and collecting on the transactions or property covered by this subcontract.

"After-imposed Federal tax," as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the subcontract date but whose exemption was later revoked or reduced during the subcontract period, on the transactions or property covered by this subcontract that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the subcontract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," as used in this clause, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this subcontract, but which the Subcontractor is not required to pay or bear, or for which the Subcontractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the subcontract date.

- B. The subcontract price includes all applicable Federal, State, and Local taxes and duties.
- C. The subcontract price shall be increased by the amount of any after-imposed Federal tax, provided the Subcontractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the subcontract price, as a contingency reserve or otherwise.
- D. The subcontract price shall be decreased by the amount of any after-relieved Federal tax.
- E. The subcontract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Subcontractor is required to pay or bear, or does not obtain a refund of, through the Subcontractor's fault, negligence, or failure to follow instructions of the NREL Subcontract Administrator.
- F. No adjustment shall be made in the subcontract price under this clause unless the amount of the adjustment exceeds \$250.
- G. The Subcontractor shall promptly notify the NREL Subcontract Administrator of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate action as the NREL Subcontract Administrator directs.
- H. The Government through NREL shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or Local tax when the Subcontractor requests such evidence and a reasonable basis exists to sustain the exemption.



**CLAUSE - FEDERAL, STATE, AND LOCAL TAXES (NONCOMPETITIVE SUBCONTRACT) (JAN 1991)**

***Derived from FAR 52.229-4***

***(Applies to fixed price subcontracts exceeding \$100,000)***

- A. "Subcontract date," as used in this clause, means the effective date of this subcontract and, for any modification to this subcontract, the effective date of the modification.

"All applicable Federal, State, and Local taxes and duties," as used in this clause, means all taxes and duties, in effect on the subcontract date, that the taxing authority is imposing and collecting on the transactions or property covered by this subcontract.

"After-imposed tax," as used in this clause, means any new or increased Federal, State, or Local tax or duty, or tax that was excluded on the subcontract date but whose exclusion was later revoked or amount of exemption reduced during the subcontract period, other than an excepted tax, on the transactions or property covered by this subcontract that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the subcontract date.

"After-relieved tax," as used in this clause, means any amount of Federal, State, or Local tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this subcontract, but which the Subcontractor is not required to pay or bear, or for which the Subcontractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the subcontract date.

"Excepted tax," as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this subcontract, or any tax assessed on the Subcontractor's possession of, interest in, or use of property, title to which is in the Government.

- B. Unless otherwise provided in this subcontract, the subcontract price includes all applicable Federal, State, and Local taxes and duties.
- C. The subcontract price shall be increased by the amount of any after-imposed tax, or of any tax or duty specifically excluded from the subcontract price by a term or condition of this subcontract that the Subcontractor is required to pay or bear, including any interest or penalty, if the Subcontractor states in writing that the subcontract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Subcontractor's fault, negligence, or failure to follow instructions of the NREL Subcontract Administrator.
- D. The subcontract price shall be decreased by the amount of any after-relieved tax. NREL/Government shall be entitled to interest received by the Subcontractor incident to a refund of taxes to the extent that such interest was earned after the Subcontractor was paid by NREL for such taxes. NREL/Government shall be entitled to repayment of any penalty refunded to the Subcontractor to the extent that the penalty was paid by NREL.

- E. The subcontract price shall be decreased by the amount of any Federal, State, or Local tax, other than an excepted tax, that was included in the subcontract price and that the Subcontractor is required to pay or bear, or does not obtain a refund of, through the Subcontractor's fault, negligence, or failure to follow instructions of the NREL Subcontract Administrator.
- F. No adjustment shall be made in the subcontract price under this clause unless the amount of the adjustment exceeds \$250.
- G. The Subcontractor shall promptly notify the NREL Subcontract Administrator of all matters relating to Federal, State, and Local taxes and duties that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate action as the NREL Subcontract Administrator directs. The subcontract price shall be equitably adjusted to cover the costs of action taken by the Subcontractor at the direction of the NREL Subcontract Administrator, including any interest, penalty, and reasonable attorney's fees.
- H. The Government through NREL shall furnish evidence appropriate to establish exemption from any Federal, State, or Local tax when --
  - 1. The Subcontractor requests such exemption and states in writing that it applies to a tax excluded from the subcontract price, and
  - 2. A reasonable basis exists to sustain the exemption.

**CLAUSE - TAXES -- SUBCONTRACTS PERFORMED IN U.S. POSSESSIONS OR PUERTO RICO (APR 1984)**  
***Derived from FAR 52.229-5***

The term "Local Taxes," as used in the Federal, State, and Local taxes clause of this subcontract, includes taxes imposed by a possession of the United States or by Puerto Rico.

**CLAUSE - TAXES--FOREIGN FIXED PRICE SUBCONTRACTS (JAN 1991)**  
***Derived from FAR 52.229-6***  
***(Applies to subcontracts exceeding \$100,000)***

- A. To the extent that this subcontract provides for furnishing supplies or performing services outside the United States, its possessions, and Puerto Rico, this clause applies in lieu of any Federal, State, and Local taxes clause of the subcontract.
- B. "Subcontract date," as used in this clause means the date set for bid opening or, if this is a negotiated subcontract or a modification, the effective date of this subcontract or modification.

"Country concerned," as used in this clause, means any country, other than the United States, its possessions, and Puerto Rico, in which expenditures under this subcontract are made.

"Tax," and "taxes," as used in this clause, include fees and charges for doing business that are levied by the Government of the country concerned or by its political subdivisions.

"All applicable taxes and duties," as used in this clause, means all taxes and duties, in effect on the subcontract date, that the taxing authority is imposing and collecting on the transactions or

property covered by this subcontract, pursuant to written ruling or regulation in effect on the subcontract date.

"After-imposed tax," as used in this clause, means any new or increased tax or duty, or tax that was exempted or excluded on the subcontract date but whose exemption was later revoked or reduced during the subcontract period, other than excepted tax, on the transactions or property covered by this subcontract that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the subcontract date.

"After-relieved tax," as used in this clause, means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this subcontract, but which the Subcontractor is not required to pay or bear, or for which the Subcontractor obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the subcontract date.

"Excepted tax," as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this subcontract, or any tax assessed on the Subcontractor's possession of, interest in, or use of property, title to which is in the U.S. Government.

- C. Unless otherwise provided in this subcontract, the subcontract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the Government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.
- D. The subcontract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the subcontract price by a provision of this subcontract that the Subcontractor is required to pay or bear, including any interest or penalty, if the Subcontractor states in writing that the subcontract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Subcontractor's fault, negligence, or failure to follow instructions of the NREL Subcontract Administrator or to comply with the provisions of paragraph (I) below.
- E. The subcontract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States/NREL shall be entitled to interest received by the Subcontractor incident to a refund of taxes to the extent that such interest was earned after the Subcontractor was paid by NREL for such taxes. The Government of the United States/NREL shall be entitled to repayment of any penalty refunded to the Subcontractor to the extent that the penalty was paid by NREL.
- F. The subcontract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the subcontract and that the Subcontractor is required to pay or bear, or does not obtain a refund of, through the Subcontractor's fault, negligence, or failure to follow instructions of the NREL Subcontract Administrator or to comply with the provisions of paragraph (I) of this clause.

- G. No adjustment shall be made in the subcontract price under this clause unless the amount of the adjustment exceeds \$250.
- H. If the Subcontractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the subcontract price or was the basis of an increase in the subcontract price, the amount of the reduction shall be paid or credited to the Government of the United States/NREL as the NREL Subcontract Administrator directs.
- I. The Subcontractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, NREL, the Subcontractor, any lower-tier subcontractor, or the transactions or property covered by this subcontract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.
- J. The Subcontractor shall promptly notify the NREL Subcontract Administrator of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate action as the NREL Subcontract Administrator directs. The subcontract price shall be equitably adjusted to cover the costs of action taken by the Subcontractor at the direction of the NREL Subcontract Administrator, including any interest, penalty, and reasonable attorneys' fees.

#### **CLAUSE - PAYMENTS UNDER FIXED PRICE CONSTRUCTION SUBCONTRACTS**

**(MAY 1997)**

***Derived from FAR 52.232-5***

***(Applies to construction subcontracts)***

- A. Payment of price.

NREL shall pay the Subcontractor the subcontract price as provided in this subcontract.

- B. Progress payments.

NREL shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the NREL Subcontract Administrator, on estimates of work accomplished which meets the standards of quality established under the subcontract, as approved by the NREL Subcontract Administrator.

- 1. The Subcontractor's request for progress payments shall include the following substantiation:
  - (i) An itemization of the amounts requested, related to the various elements of work required by the subcontract covered by the payment requested.
  - (ii) A listing of the amount included for work performed by each lower-tier subcontractor under the subcontract.

- (iii) A listing of the total amount of each lower-tier subcontract under the subcontract.
  - (iv) A listing of the amounts previously paid to each such lower-tier subcontractor under the subcontract.
  - (v) Additional supporting data in a form and detail required by the NREL Subcontract Administrator.
2. In the preparation of estimates, the NREL Subcontract Administrator may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Subcontractor at locations other than the site also may be taken into consideration if--
- (i) Consideration is specifically authorized by this subcontract; and
  - (ii) The Subcontractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this subcontract.

C. Subcontractor certification.

Along with each request for progress payments, the Subcontractor shall furnish the following certification, or payment shall not be made: (However, if the Subcontractor elects to delete paragraph (C)(4) from the certification, the certification is still acceptable.)

I hereby certify, to the best of my knowledge and belief, that--

- 1. The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;
- 2. Payments to lower-tier subcontractors and suppliers have been made from previous payments received under the subcontract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with lower-tier subcontract agreements and the requirements of chapter 39 of Title 31, United States Code; and
- 3. This request for progress payments does not include any amounts which the Prime Subcontractor intends to withhold or retain from a lower-tier subcontractor or supplier in accordance with the terms and conditions of the lower-tier subcontract; and
- 4. This certification is not to be construed as final acceptance of a lower-tier subcontractor's performance.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

D. Refund of unearned amounts.

If the Subcontractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Subcontractor that fails to conform to the specifications, terms, and conditions of this subcontract (hereinafter referred to as the "unearned amount"), the Subcontractor shall--

1. Notify the NREL Subcontract Administrator of such performance deficiency; and
2. Be obligated to pay NREL/Government an amount (computed by the NREL Subcontract Administrator in the manner provided in paragraph (J) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until--
  - (i) The date the Subcontractor notifies the NREL Subcontract Administrator that the performance deficiency has been corrected; or
  - (ii) The date the Subcontractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

E. Retainage.

If the NREL Subcontract Administrator finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the NREL Subcontract Administrator shall authorize payment to be made in full. However, if satisfactory progress has not been made, the NREL Subcontract Administrator may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the NREL Subcontract Administrator may retain from previously withheld funds and future progress payments that amount the NREL Subcontract Administrator considers adequate for protection of NREL/Government and shall release to the Subcontractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the subcontract, for which the price is stated separately in the subcontract, payment shall be made for the completed work without retention of a percentage.

F. Title, liability, and reservation of rights.

All material and work covered by progress payments made shall, at the time of payment, become the sole property of NREL/Government, but this shall not be construed as--

1. Relieving the Subcontractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
2. Waiving the right of NREL/Government to require the fulfillment of all of the terms of the subcontract.

G. Reimbursement for bond premiums.

In making these progress payments, NREL shall, upon request, reimburse the Subcontractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Subcontractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (E) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

H. Final payment.

NREL shall pay the amount due the Subcontractor under this subcontract after--

1. Completion and acceptance of all work;
  2. Presentation of a properly executed voucher; and
  3. Presentation of release of all claims against NREL/Government arising by virtue of this subcontract, other than claims, in stated amounts, that the Subcontractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Subcontractor's claim to amounts payable under this subcontract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).
- (i) Limitation because of undefinitized work.

Notwithstanding any provision of this subcontract, progress payments shall not exceed eighty (80) percent on work accomplished on undefinitized subcontract actions. A "subcontract action" is any action resulting in a subcontract, as defined in FAR Subpart 2.1, including subcontract modifications for additional supplies or services, but not including subcontract modifications that are within the scope and under the terms of the subcontract, such as subcontract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

J. Interest computation on unearned amounts.

In accordance with 31 U.S.C. 3903(c)(1), the amount payable under subparagraph (D)(2) of this clause shall be--

1. Computed at the rate of average bond equivalent rates of ninety-one (91)-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Subcontractor receives the unearned amount; and
2. Deducted from the next available payment to the Subcontractor.

**CLAUSE - LIMITATION OF COST (APR 1984)**

***Derived from FAR 52.232-20***

***(Applies to fully funded, cost reimbursement subcontracts)***

- A. The parties estimate that performance of this subcontract, exclusive of any fee, will not cost NREL more than --
  - 1. The estimated cost specified in the Schedule or,
  - 2. If this is a cost-sharing subcontract, NREL's share of the estimated cost specified in the Schedule. The Subcontractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this subcontract within the estimated cost, which, if this is a cost-sharing subcontract, includes both NREL's and the Subcontractor's share of the cost.
- B. The Subcontractor shall notify the NREL Subcontract Administrator in writing whenever it has reason to believe that --
  - 1. The costs the Subcontractor expects to incur under this subcontract in the next sixty (60) days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or
  - 2. The total cost for the performance of this subcontract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.
- C. As part of the notification, the Subcontractor shall provide the NREL Subcontract Administrator a revised estimate of the total cost of performing this subcontract.
- D. Except as required by other provisions of this subcontract, specifically citing and stated to be an exception to this clause --
  - 1. NREL is not obligated to reimburse the Subcontractor for cost incurred in excess of
    - (i) The estimated cost specified in the Schedule or,
    - (ii) If this is a cost-sharing subcontract, the estimated cost to NREL specified in the Schedule; and
  - 2. The Subcontractor is not obligated to continue performance under this subcontract (including actions under the Termination clause of this subcontract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the NREL Subcontract Administrator --
    - (i) Notifies the Subcontractor in writing that the estimated cost has been increased and
    - (ii) Provides a revised estimated total cost of performing this subcontract. If this is a cost-sharing subcontract, the increase shall be allocated in accordance with the formula specified in the Schedule.



- E. No notice, communication, or representation in any form other than that specified in subparagraph (D)(2) above, or from any person other than the NREL Subcontract Administrator, shall affect this subcontract's estimated cost to NREL. In the absence of the specified notice, NREL is not obligated to reimburse the Subcontractor for any costs in excess of the estimated cost or, if this is a cost-sharing subcontract, for any costs in excess of the estimated cost to NREL specified in the Schedule, whether those excess costs were incurred during the course of the subcontract or as a result of termination.
- F. If the estimated cost specified in the Schedule is increased, any costs the Subcontractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the NREL Subcontract Administrator issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.
- G. Change orders shall not be considered an authorization to exceed the estimated cost to NREL specified in the Schedule, unless they contain a statement increasing the estimated cost.
- H. If this subcontract is terminated or the estimated cost is not increased, NREL and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the subcontract, based upon the share of costs incurred by each.

**CLAUSE - LIMITATION OF FUNDS (APR 1984)**

***Derived from FAR 52.232-22***

***(Applies to incrementally funded, cost reimbursement subcontracts)***

- A. The parties estimate that performance of this subcontract will not cost NREL more than
  - 1. The estimated cost specified in the Schedule or,
  - 2. If this is a cost-sharing subcontract, NREL's share of the estimated cost specified in the Schedule.

The Subcontractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this subcontract within the estimated cost, which, if this is a cost-sharing subcontract, includes both NREL's and the Subcontractor's share of the cost.

- B. The Schedule specifies the amount presently available for payment by NREL and allotted to this subcontract, the items covered, NREL's share of the cost if this is a cost-sharing subcontract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that NREL will allot additional funds incrementally to the subcontract up to the full estimated cost to NREL specified in the Schedule, exclusive of any fee. The Subcontractor agrees to perform, or have performed, work on the subcontract up to the point at which the total amount paid and payable by NREL under the subcontract approximates but does not exceed the total amount actually allotted by NREL to the subcontract.
- C. The Subcontractor shall notify the NREL Subcontract Administrator in writing whenever it has reason to believe that the costs it expects to incur under this subcontract in the next sixty (60) days, when added to all costs previously incurred, will exceed seventy-five (75) percent of--

1. The total amount so far allotted to the subcontract by NREL or,
2. If this is a cost-sharing subcontract, the amount then allotted to the subcontract by NREL plus the Subcontractor's corresponding share.

The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

- D. Sixty (60) days before the end of the period specified in the Schedule, the Subcontractor shall notify the NREL Subcontract Administrator in writing of the estimated amount of additional funds, if any, required to continue timely performance under the subcontract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.
- E. If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Subcontractor's written request the NREL Subcontract Administrator will terminate this subcontract on that date in accordance with the provisions of the Termination clause of this subcontract. If the Subcontractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the NREL Subcontract Administrator may terminate this subcontract on that later date.
- F. Except as required by other provisions of this subcontract, specifically citing and stated to be an exception to this clause --
1. NREL is not obligated to reimburse the Subcontractor for costs incurred in excess of the total amount allotted by NREL to this subcontract; and
  2. The Subcontractor is not obligated to continue performance under this subcontract (including actions under the Termination clause of this subcontract) or otherwise incur costs in excess of --
    - (i) The amount then allotted to the subcontract by NREL or;
    - (ii) If this is a cost-sharing subcontract, the amount then allotted by NREL to the subcontract plus the Subcontractor's corresponding share, until the NREL Subcontract Administrator notifies the Subcontractor in writing that the amount allotted by NREL has been increased and specifies an increased amount, which shall then constitute the total amount allotted by NREL to this subcontract.
- G. The estimated cost shall be increased to the extent that
1. The amount allotted by NREL or,
  2. If this is a cost-sharing subcontract, the amount then allotted by NREL to the subcontract plus the Subcontractor's corresponding share, exceeds the estimated cost specified in the Schedule.

If this is a cost-sharing subcontract, the increase shall be allocated in accordance with the formula specified in the Schedule.

- H. No notice, communication, or representation in any form other than that specified in subparagraph (F)(2) above, or from any person other than the NREL Subcontract Administrator, shall affect the amount allotted by NREL to this subcontract. In the absence of the specified notice, NREL is not obligated to reimburse the Subcontractor for any costs in excess of the total amount allotted by NREL to this subcontract, whether incurred during the course of the subcontract or as a result of termination.
- I. When and to the extent that the amount allotted by NREL to the subcontract is increased, any costs the Subcontractor incurs before the increase that are in excess of --
  - 1. The amount previously allotted by NREL or;
  - 2. If this is a cost-sharing subcontract, the amount previously allotted by NREL to the subcontract plus the Subcontractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the NREL Subcontract Administrator issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.
- J. Change orders shall not be considered an authorization to exceed the amount allotted by NREL specified in the Schedule, unless they contain a statement increasing the amount allotted.
- K. Nothing in this clause shall affect the right of NREL/Government to terminate this subcontract. If this subcontract is terminated, NREL and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the subcontract, based upon the share of costs incurred by each.
- L. If NREL does not allot sufficient funds to allow completion of the work, the Subcontractor is entitled to a percentage of the fee specified in the Schedule equaling the percentage of completion of the work contemplated by this subcontract.

**CLAUSE - DIFFERING SITE CONDITIONS (APR 1984)**

***Derived from FAR 52.236-2***

***(Applies to construction subcontracts)***

- A. The Subcontractor shall promptly, and before the conditions are disturbed, give a written notice to the NREL Subcontract Administrator of --
  - 1. Subsurface or latent physical conditions at the site which differ materially from those indicated in this subcontract, or
  - 2. Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the subcontract.
- B. The NREL Subcontract Administrator shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Subcontractor's cost of, or the time required for, performing any part of the work under this subcontract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the subcontract modified in writing accordingly.

- C. No request by the Subcontractor for an equitable adjustment to the subcontract under this clause shall be allowed, unless the Subcontractor has given the written notice required; provided, that the time prescribed in (A) above for giving written notice may be extended by the NREL Subcontract Administrator.
- D. No request by the Subcontractor for an equitable adjustment to the subcontract for differing site conditions shall be allowed if made after final payment under this subcontract.

**CLAUSE - SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK  
(APR 1984)**

***Derived from FAR 52.236-3***

***(Applies to construction subcontracts)***

- A. The Subcontractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to
  - 1. Conditions bearing upon transportation, disposal, handling, and storage of materials;
  - 2. The availability of labor, water, electric power, and roads;
  - 3. Uncertainties of weather, river stages, tides, or similar physical conditions at the site;
  - 4. The conformation and conditions of the ground; and
  - 5. The character of equipment and facilities needed preliminary to and during work performance. The Subcontractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by NREL, as well as from the drawings and specifications made a part of this subcontract. Any failure of the Subcontractor to take the actions described and acknowledged in this paragraph will not relieve the Subcontractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to NREL.
- B. Neither the Government nor NREL assume any responsibility for any conclusions or interpretations made by the Subcontractor based on the information made available by NREL/Government. Nor does NREL/Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this subcontract, unless that understanding or representation is expressly stated in this subcontract.

**CLAUSE - MATERIAL AND WORKMANSHIP (APR 1984)**

***Derived from FAR 52.236-5***

***(Applies to construction subcontracts)***

- A. All equipment, material, and articles incorporated into the work covered by this subcontract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in

this subcontract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Subcontractor may, at its option, use any equipment, material, article, or process that, in the judgement of the NREL Subcontract Administrator, is equal to that named in the specifications, unless otherwise specifically provided in this subcontract.

- B. The Subcontractor shall obtain the NREL Subcontract Administrator's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Subcontractor shall furnish to the NREL Subcontract Administrator the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this subcontract or by the NREL Subcontract Administrator, the Subcontractor shall also obtain the NREL Subcontract Administrator's approval of the material or articles which the Subcontractor contemplates incorporating into the work. When requesting approval, the Subcontractor shall provide full information concerning the material or articles. When directed to do so, the Subcontractor shall submit samples for approval at the Subcontractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.
- C. All work under this subcontract shall be performed in a skillful and workmanlike manner. The NREL Subcontract Administrator may require, in writing, that the Subcontractor remove from the work any employee the NREL Subcontract Administrator deems incompetent, careless, or otherwise objectionable.

**CLAUSE - SUPERINTENDENCE BY THE SUBCONTRACTOR (APR 1984)**

***Derived from FAR 52.236-6***

***(Applies to construction subcontracts)***

At all times during performance of this subcontract and until the work is completed and accepted, the Subcontractor shall directly superintend the worksite or assign and have on the worksite a competent superintendent who is satisfactory to the NREL Subcontract Administrator and has authority to act for the Subcontractor.

**CLAUSE - PERMITS AND RESPONSIBILITIES (NOV 1991)**

***Derived from FAR 52.236-7***

***(Applies to construction subcontracts)***

The Subcontractor shall, without additional expense to NREL, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Subcontractor shall also be responsible for all damages to persons or property that occur as a result of the Subcontractor's fault or negligence. The Subcontractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the subcontract.

**CLAUSE - OTHER CONTRACTS/SUBCONTRACTS (APR 1984)**

***Derived from FAR 52.236-8***

***(Applies to construction subcontracts)***

NREL/Government may undertake or award other contracts or subcontracts for additional work at or near the site of the work under this subcontract. The Subcontractor shall fully cooperate with the other contractors or subcontractors and with NREL/Government employees and shall carefully adapt scheduling and performing the work under this subcontract to accommodate the additional work, heeding any direction that may be provided by the NREL Subcontract Administrator. The Subcontractor shall not commit or permit any act that will interfere with the performance of work by any other contractor, Subcontractor, or by NREL/Government employees.

**CLAUSE - PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)**

***Derived from FAR 52.236-9***

***(Applies to construction subcontracts)***

- A. The Subcontractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this subcontract. The Subcontractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during subcontract performance, or by the careless operation of equipment, or by workmen, the Subcontractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the NREL Subcontract Administrator.
- B. The Subcontractor shall protect from damage all existing improvements and utilities --
  - 1. At or near the work site, and
  - 2. On adjacent property of a third party, the locations of which are made known to or should be known by the Subcontractor. The Subcontractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this subcontract or failure to exercise reasonable care in performing the work. If the Subcontractor fails or refuses to repair the damage promptly, the NREL Subcontract Administrator may have the necessary work performed and charge the cost to the Subcontractor.

**CLAUSE - OPERATIONS AND STORAGE AREAS (APR 1984)**

***Derived from FAR 52.236-10***

***(Applies to construction subcontracts)***

- A. The Subcontractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the NREL Subcontract Administrator. The Subcontractor shall hold and save NREL/Government, their officers and agents, free and harmless from liability of any nature occasioned by the Subcontractor's performance.
- B. Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Subcontractor only with the approval of the NREL Subcontract Administrator and shall be built

with labor and materials furnished by the Subcontractor without expense to NREL. The temporary buildings and utilities shall remain the property of the Subcontractor and shall be removed by the Subcontractor at its expense upon completion of the work. With the written consent of the NREL Subcontract Administrator, the buildings and utilities may be abandoned and need not be removed.

- C. The Subcontractor shall, under regulations prescribed by the NREL Subcontract Administrator, use only established roadways, or use temporary roadways constructed by the Subcontractor when and as authorized by the NREL Subcontract Administrator. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or Local law or regulation. When it is necessary to cross curbs or sidewalks, the Subcontractor shall protect them from damage. The Subcontractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

**CLAUSE - USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)**

*Derived from FAR 52.236-11*

*(Applies to construction subcontracts)*

- A. NREL shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the NREL Subcontract Administrator shall furnish the Subcontractor a list of items of work remaining to be performed or corrected on those portions of the work that NREL intends to take possession of or use. However, failure of the NREL Subcontract Administrator to list any item of work shall not relieve the Subcontractor of responsibility for complying with the terms of the subcontract. NREL's possession or use shall not be deemed an acceptance of any work under the subcontract.
- B. While NREL has such possession or use, the Subcontractor shall be relieved of the responsibility for the loss of or damage to the work resulting from NREL's possession or use, notwithstanding the terms of the clause in this subcontract entitled "Permits and Responsibilities." If prior possession or use by NREL delays the progress of the work or causes additional expense to the Subcontractor, an equitable adjustment shall be made in the subcontract price or the time of completion, and the subcontract shall be modified in writing accordingly.

**CLAUSE - CLEANING UP (APR 1984)**

*Derived from FAR 52.236-12*

*(Applies to construction subcontracts)*

The Subcontractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Subcontractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of NREL/Government. Upon completing the work, the Subcontractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the NREL Subcontract Administrator.

**CLAUSE - ACCIDENT PREVENTION (NOV 1991) AND ALTERNATE I (NOV 1991)**

*Derived from FAR 52.236-13*

*(Applies to construction subcontracts)*

- A. The Subcontractor shall provide and maintain work environments and procedures which will--
  - 1. Safeguard the public, the Government, and NREL personnel, property, materials, supplies, and equipment exposed to Subcontractor operations and activities;

2. Avoid interruptions of NREL/Government operations and delays in project completion dates; and
  3. Control costs in the performance of this subcontract.
- B. For these purposes on subcontracts for construction or dismantling, demolition, or removal of improvements, the Subcontractor shall --
1. Provide appropriate safety barricades, signs, and signal lights;
  2. Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
  3. Ensure that any additional measures the NREL Subcontract Administrator determines to be reasonably necessary for the purposes are taken.
- C. If this subcontract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Subcontractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.
- D. Whenever the NREL Subcontract Administrator becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the NREL Subcontract Administrator shall notify the Subcontractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Subcontractor or the Subcontractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Subcontractor shall immediately take corrective action. If the Subcontractor fails or refuses to take corrective action promptly, the NREL Subcontract Administrator may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Subcontractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.
- E. The Subcontractor shall insert this clause, including this paragraph (E), with appropriate changes in the designation of the parties, in lower-tier subcontracts.

***Alternate I***

***(If the subcontract will involve work of a long duration or hazardous nature, or is to be performed on a NREL/Government facility and the technical representatives advise that special precautions are appropriate, add the following paragraph (F) to this basic clause:)***

- F. Before commencing the work, the Subcontractor shall --
1. Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and



2. Meet with representatives of the NREL Subcontract Administrator to discuss and develop a mutual understanding relative to administration of the overall safety program.

**CLAUSE - AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)**

***Derived from FAR 52.236-14***

***(Applies to construction subcontracts to be performed on a NREL/Government facility)***

- A. NREL shall make all reasonably required amounts of utilities available to the Subcontractor from existing outlets and supplies, as specified in the subcontract. Unless otherwise provided in the subcontract's schedule, the utility service consumed shall be at no charge. If the subcontract's schedule does provide an amount for each utility service consumed, then that amount of each utility service consumed shall be charged to or paid for by the Subcontractor at prevailing rates charged to NREL or, where the utility is produced by the Government, at reasonable rates determined by the DOE Contracting Officer. The Subcontractor shall carefully conserve any utilities furnished without charge.
- B. The Subcontractor, at its expense and in a workmanlike manner satisfactory to the NREL Subcontract Administrator, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by NREL, the Subcontractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

**CLAUSE - SCHEDULES FOR CONSTRUCTION SUBCONTRACTS (APR 1984)**

***Derived from FAR 52.236-15***

***(Applies to construction subcontracts exceeding \$100,000)***

- A. The Subcontractor shall, within five days after the work commences on the subcontract or another period of time determined by the NREL Subcontract Administrator, prepare and submit to the NREL Subcontract Administrator for approval three copies of a practicable schedule showing the order in which the Subcontractor proposes to perform the work, and the dates on which the Subcontractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Subcontractor fails to submit a schedule within the time prescribed, the NREL Subcontract Administrator may withhold approval of progress payments until the Subcontractor submits the required schedule.
- B. The Subcontractor shall enter the actual progress on the chart as directed by the NREL Subcontract Administrator, and upon doing so shall immediately deliver three copies of the annotated schedule to the NREL Subcontract Administrator. If, in the opinion of the NREL Subcontract Administrator, the Subcontractor falls behind the approved schedule, the Subcontractor shall take steps necessary to improve its progress, including those that may be required by the NREL Subcontract Administrator, without additional cost to NREL. In this circumstance, the NREL Subcontract Administrator may require the Subcontractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and

to submit for approval any supplementary schedule or schedules in chart form as the NREL Subcontract Administrator deems necessary to demonstrate how the approved rate of progress will be regained.

- C. Failure of the Subcontractor to comply with the requirements of the NREL Subcontract Administrator under this clause shall be grounds for a determination by the NREL Subcontract Administrator that the Subcontractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the subcontract. Upon making this determination, the NREL Subcontract Administrator may terminate the Subcontractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this subcontract.

**CLAUSE - SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION  
(FEB 1997) AND ALTERNATE I (APR 1984)**

*Derived from FAR 52.236-21*

*(Applies to construction subcontracts)*

- A. The Subcontractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the NREL Subcontract Administrator access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the NREL Subcontract Administrator, who shall promptly make a determination in writing. Any adjustment by the Subcontractor without such a determination shall be at its own risk and expense. The NREL Subcontract Administrator shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
- B. Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of the NREL Subcontract Administrator is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" the NREL Subcontract Administrator, unless otherwise expressly stated.
- C. Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this subcontract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed."
- D. Shop drawings means drawings, submitted to NREL by the Subcontractor, or any lower tier subcontractor pursuant to a construction subcontract, showing in detail --
  - 1. The proposed fabrication and assembly of structural elements, and
  - 2. The installation (i.e., form, fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations,

schedules, performance and test data, and similar materials furnished by the Subcontractor to explain in detail specific portions of the work required by the subcontract.

NREL/Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this subcontract.

- E. If this subcontract requires shop drawings, the Subcontractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with subcontract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the NREL Subcontract Administrator without evidence of the Subcontractor's approval may be returned for resubmission. The NREL Subcontract Administrator will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate NREL's reasons therefor. Any work done before such approval shall be at the Subcontractor's risk. Approval by the NREL Subcontract Administrator shall not relieve the Subcontractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this subcontract, except with respect to variations described and approved in accordance with (F) below.
- F. If shop drawings show variations from the subcontract requirements, the Subcontractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the NREL Subcontract Administrator approves any such variation, the NREL Subcontract Administrator shall issue an appropriate subcontract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.
- G. The Subcontractor shall submit to the NREL Subcontract Administrator for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the NREL Subcontract Administrator and one set will be returned to the Subcontractor.

***Alternate I***

***(When record shop drawings are required and reproducible shop drawings are needed, add the following sentences to paragraph (G) of the basic clause:)***

Upon completing the work under this subcontract, the Subcontractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

**CLAUSE - DESIGN WITHIN FUNDING LIMITATIONS (APR 1984)**

***Derived from FAR 52.236-22***

***(Applies to architect-engineer subcontracts)***

- A. The Subcontractor shall accomplish the design services required under this subcontract so as to permit the award of a subcontract, using standard Federal Acquisition Regulation procedures for the construction of the facilities designed at a price that does not exceed the estimated construction subcontract price as set forth in the Subcontract Schedule or the Statement of Work. When bids or proposals for the construction

subcontract are received that exceed the estimated price, the Subcontractor shall perform such redesign and other services as are necessary to permit subcontract award within the funding limitation. These additional services shall be performed at no increase in the price of this subcontract. However, the Subcontractor shall not be required to perform such additional services at no cost to NREL if the unfavorable bids or proposals are the result of conditions beyond its reasonable control.

- B. The Subcontractor will promptly advise the NREL Subcontract Administrator if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, the NREL Subcontract Administrator will review the Subcontractor's revised estimate of construction cost. NREL may, if it determines that the estimated construction subcontract price set forth in this subcontract is so low that award of a construction subcontract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction subcontract price set forth in the Schedule, or NREL may adjust such estimated construction subcontract price. When bids or proposals are not solicited or are unreasonably delayed, NREL shall prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of bids or proposals to determine compliance with the funding limitation.

**CLAUSE - RESPONSIBILITY OF THE ARCHITECT-ENGINEER SUBCONTRACTOR  
(APR 1984)**

*Derived from FAR 52.236-23*

*(Applies to architect-engineer subcontracts)*

- A. The Subcontractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Subcontractor under this subcontract. The Subcontractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.
- B. Neither NREL's review, approval or acceptance of, nor payment for, the services required under this subcontract shall be construed to operate as a waiver of any rights under this subcontract or of any cause of action arising out of the performance of this subcontract, and the Subcontractor shall be and remain liable to NREL/Government in accordance with applicable law for all damages to NREL/Government caused by the Subcontractor's negligent performance of any of the services furnished under this subcontract.
- C. The rights and remedies of NREL/Government provided for under this subcontract are in addition to any other rights and remedies provided by law.
- D. If the Subcontractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

**CLAUSE - WORK OVERSIGHT IN ARCHITECT-ENGINEER SUBCONTRACTS  
(APR 1984)**

***Derived from FAR 52.236-24***

***(Applies to architect-engineer subcontracts)***

The extent and character of the work to be done by the Subcontractor shall be subject to the general oversight, supervision, direction, control, and approval of the NREL Subcontract Administrator.

**CLAUSE - REQUIREMENTS FOR REGISTRATION OF DESIGNERS (APR 1984)**

***Derived from FAR 52.236-25***

***(Applies to architect-engineer subcontracts)***

The design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in a State or possession of the United States, in Puerto Rico, or in the District of Columbia.

**CLAUSE - BANKRUPTCY (JUL 1995)**

***Derived from FAR 52.242-13***

***(Applies to subcontracts exceeding \$100,000)***

In the event the Subcontractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Subcontractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the NREL Subcontract Administrator responsible for administering the subcontract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this subcontract.

**CLAUSE - SUSPENSION OF WORK (APR 1984)**

***Derived from FAR 52.242-14***

***(Applies to construction and architect-engineer subcontracts)***

- A. The NREL Subcontract Administrator may order the Subcontractor, in writing, to suspend, delay, or interrupt all or any part of the work of this subcontract for the period of time that the NREL Subcontract Administrator determines appropriate for the convenience of NREL/Government.
- B. If the performance of all or any part of the work is, for any unreasonable period of time, suspended, delayed, or interrupted--
  - 1. By an act of the NREL Subcontract Administrator in the administration of this subcontract, or
  - 2. By the NREL Subcontract Administrator's failure to act within the time specified in this subcontract (or within a reasonable time if not specified), an adjustment shall be made for

any increase in the cost of performance of this subcontract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the subcontract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Subcontractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this subcontract.

C. A claim under this clause shall not be allowed --

1. For any costs incurred more than twenty (20) days before the Subcontractor shall have notified the NREL Subcontract Administrator in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and
2. Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the subcontract.

**CLAUSE - STOP WORK ORDER (AUG 1989) AND ALTERNATE 1 -  
COST REIMBURSEMENT (AUG 1989)**

*Derived from FAR 52.242-15*

A. The NREL Subcontract Administrator may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all, or any part, of the work called for by this subcontract for a period of ninety (90) days after the order is delivered to the Subcontractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a stop-work is delivered to the Subcontractor, or within any extension of that period to which the parties shall have agreed, the NREL Subcontract Administrator shall either --

1. Cancel the stop-work order; or
2. Terminate the work covered by the order as provided in the Default or the Termination clause of this subcontract.

B. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Subcontractor shall resume work. The NREL Subcontract Administrator shall make an equitable adjustment and the subcontract shall be modified, in writing, accordingly, if --

1. The stop-work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of this subcontract; and

2. The Subcontractor asserts its right to the adjustment within thirty (30) days after the end of the period of work stoppage; provided, that, if the NREL Subcontract Administrator decides the facts justify the action, the NREL Subcontract Administrator may receive and act upon the claim submitted at any time before final payment under this subcontract.
- C. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of NREL/Government, the NREL Subcontract Administrator shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- D. If a stop-work order is not canceled and the work covered by the order is terminated for default, the NREL Subcontract Administrator shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

***Alternate I (Apr 1984)***

If this clause is inserted in a cost-reimbursement subcontract, substitute in paragraph (A)(2) the words "the Termination clause of this subcontract" for the words "the Default, or the Termination for Convenience of the Government clause of this subcontract." In paragraph (B) substitute the words "an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the subcontract that may be affected" for the words "an equitable adjustment in the delivery schedule or subcontract price, or both."

**CLAUSE - CHANGES - FIXED PRICE (AUG 1987) AND ALTERNATES I THROUGH V (APR 1984)**

***Derived from FAR 52.243-1***

- A. The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
  1. Description of services to be performed.
  2. Time of performance (i.e., hours of the day, days of the week, etc.).
  3. Place of performance of the services.
  4. Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for NREL/Government, in accordance with the drawings, designs, or specifications.
  5. Method of shipment or packing or supplies.
  6. Place of delivery.
- B. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this subcontract, whether or not changed by the order, the NREL Subcontract Administrator shall make an equitable adjustment in the subcontract price, the delivery schedule, or both, and shall modify the subcontract.

- C. The Subcontractor must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of the written order. However, if the NREL Subcontract Administrator decides that the facts justify it, the NREL Subcontract Administrator may receive and act upon a proposal submitted before final payment of the subcontract.
- D. If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, the NREL Subcontract Administrator shall have the right to prescribe the manner of the disposition of the property.
- E. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed

***Alternate I (APR 1984)***

***(If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, substitute the following paragraph (A) for paragraph (A) of the basic clause:)***

- A. The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
  - 1. Description of services to be performed.
  - 2. Time of performance (i.e., hours of the day, days of the week, etc.).
  - 3. Place of performance of the services.

***Alternate II (APR 1984)***

***(If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, substitute the following paragraph (A) for paragraph (A) of the basic clause:)***

- A. The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
  - 1. Description of services to be performed.
  - 2. Time of performance (i.e., hours of the day, days of the week, etc.).
  - 3. Place of performance of the services.
  - 4. Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for NREL/Government, in accordance with the drawings, designs, or specifications.



5. Method of shipment or packing of supplies.
6. Place of delivery.

***Alternate III (APR 1984)***

***(If the requirement is for architect-engineer or other professional services, substitute the following paragraph (A) for paragraph (A) of the basic clause and add the following paragraph (F):***

- A. The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in the services to be performed.

\* \* \* \* \*

- F. No services for which an additional cost or fee will be charged by the Subcontractor shall be furnished without the prior written authorization of the NREL Subcontract Administrator.

***Alternate IV (APR 1984)***

***(If the requirement is for transportation services, substitute the following paragraph (A) for paragraph (A) of the basic clause:)***

- A. The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:

1. Specifications.
2. Work or services.
3. Place of origin.
4. Place of delivery.
5. Tonnage to be shipped.
6. Amount of Government-furnished property.

***Alternate V (APR 1984)***

***(If the requirement is for fixed price research and development, substitute the following subparagraphs (A) (1) and (A)(3) and paragraph (B) for subparagraphs (A)(1) and (A)(3) and paragraph (B) of the basic clause:)***

- A. \* \* \* \* \*

1. Drawings, designs, or specifications.  
\* \* \* \* \*
2. Place of inspection, delivery, or acceptance.

- B. If any such change causes an increase or decrease in the cost of, or time required for, performing this subcontract, whether or not changed by the order, the NREL Subcontract Administrator shall make an equitable adjustment in--

1. The subcontract price, the time of performance, or both; and
2. Other affected terms of the subcontract, and shall modify the subcontract accordingly.

**CLAUSE - CHANGES - COST REIMBURSEMENT (AUG 1987) ALTERNATE V -  
RESEARCH AND DEVELOPMENT (AUG 1987)**

*Derived from FAR 52.243-2*

- A. The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
1. Drawings, designs, or specifications.
  2. Method of shipment or packing.
  3. Place of inspection, delivery, or acceptance.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this subcontract, whether or not changed by the order, or otherwise affects any other terms and conditions of this subcontract, the NREL Subcontract Administrator shall make an equitable adjustment in the --
1. Estimated cost or delivery or completion schedule, or both;
  2. Amount of any fixed fee; and
  3. Other affected terms and shall modify the subcontract accordingly.
- C. The Subcontractor must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of the written order. However, if the NREL Subcontract Administrator decides that the facts justify it, the NREL Subcontract Administrator may receive and act upon a proposal submitted before final payment of the subcontract.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A) and (B) above, the estimated cost of this subcontract and, if this subcontract is incrementally funded, the funds allotted for the performance of this subcontract, shall not be increased or considered to be increased except by specific written modification of the subcontract indicating the new subcontract estimated cost and, if this subcontract is incrementally funded, the new amount allotted to the subcontract. Until this modification is made, the Subcontractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost clause or Limitation of Funds article of this subcontract.

**CLAUSE - CHANGES - TIME-AND-MATERIALS OR LABOR-HOURS (AUG 1987)**

*Derived from FAR 52.243-3*

- A. The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
1. Drawings, designs, or specifications.
  2. Method of shipment or packing.
  3. Place of delivery.
  4. Amount of Government-furnished property.

- B. If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this subcontract, whether or not changed by the order, or otherwise affects any other terms and conditions of this subcontract, the NREL Subcontract Administrator shall make an equitable adjustment in the --
1. Ceiling price,
  2. Hourly rates,
  3. Delivery schedule, and
  4. Other affected terms, and shall modify the subcontract accordingly.
- C. The Subcontractor must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of the written order. However, if the NREL Subcontract Administrator decides that the facts justify it, the NREL Subcontract Administrator may receive and act upon a proposal submitted before final payment of the subcontract.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.

**CLAUSE - CHANGES - FIXED PRICE CONSTRUCTION (AUG 1987)**

*Derived from FAR 52.243-4.*

*(Applies to construction subcontracts exceeding \$100,000)*

- A. The NREL Subcontract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the subcontract, including changes--
1. In the specifications (including drawings and designs);
  2. In the method or manner of performance of the work;
  3. In the Government-furnished facilities, equipment, materials, services, or site; or
  4. Directing acceleration in the performance of the work.
- B. Any other written or oral order (which, as used in this paragraph (B), includes direction, instruction, interpretation, or determination) from the NREL Subcontract Administrator that causes a change shall be treated as a change order under this clause; provided, that the Subcontractor gives the NREL Subcontract Administrator written notice stating--
1. The date, circumstances, and source of the order; and
  2. That the Contractor regards the order as a change order.
- C. Except as provided in this clause, no order, statement, or conduct of the NREL Subcontract Administrator shall be treated as a change under this clause or entitle the Subcontractor to an equitable adjustment.

- D. If any change under this clause causes an increase or decrease in the Subcontractor's cost of, or the time required for, the performance of any part of the work under this subcontract, whether or not changed by any such order, the NREL Subcontract Administrator shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (B) of this clause shall be made for any costs incurred more than twenty (20) days before the Subcontractor gives written notice as required. In the case of defective specifications for which NREL/Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Subcontractor in attempting to comply with the defective specifications.
- E. The Subcontractor must assert its right to an adjustment under this clause within thirty (30) days after --
1. Receipt of a written change order under paragraph (A) of this clause, or
  2. The furnishing of a written notice under paragraph (B) of this clause, by submitting to the NREL Subcontract Administrator a written statement describing the general nature and amount of the proposal, unless this period is extended by NREL/Government. The statement of proposal for adjustment may be included in the notice under paragraph (B) above.
- F. No proposal by the Subcontractor for an equitable adjustment shall be allowed if asserted after final payment under this subcontract.

**CLAUSE - LOWER-TIER SUBCONTRACTS (AUG 1998)**

***Derived from FAR 52.244-2***

***(Applies to all cost reimbursement subcontracts, and letter; fixed price; time and material; and labor hour subcontracts exceeding \$100,000)***

**A. Definitions.**

As used in this clause-

"Approved purchasing system" means a Subcontractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR)

"Consent to lower-tier subcontract" means the NREL Subcontract Administrator's written consent for the Subcontractor to enter into a particular lower-tier subcontract.

"Lower-tier subcontract" means any contract, as defined in FAR Subpart 2.1, entered into by a lower-tier subcontractor to furnish supplies or services for performance of the prime contract or a lower-tier subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

- B. This clause does not apply to lower-tier subcontracts for special test equipment when the subcontract contains the clause at FAR 52.245-18, Special Test Equipment.

- C. When this clause is included in a fixed-price type subcontract, consent to lower-tier subcontract is required only on unpriced subcontract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (D)( or (E) or this clause.
- D. If the Subcontractor does not have an approved purchasing system, consent to lower-tier subcontract is required for any lower-tier subcontract that--
1. Is of the cost-reimbursement, time-and-materials, or labor-hour type; or
  2. Is fixed-price and exceeds-
    - (i) For a subcontract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold (\$100,000) or five (5) percent of the total estimated cost of the subcontract; or
    - (ii) For subcontracts awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold (\$100,000) or five (5) percent of the total estimated cost of the subcontract.
- E. If the Subcontractor has an approved purchasing system, the Subcontractor nevertheless shall obtain the DOE Contracting Officer's written consent before placing the following lower-tier subcontracts:

Lower tier subcontracts requiring written consent are identified in the subcontract schedule.

- F. 1. The Subcontractor shall notify the NREL Subcontract Administrator reasonably in advance of placing any lower-tier subcontract or modification thereof for which consent is required under paragraph (C), (D), or (E) of this clause, including the following information:
- (i) A description of the supplies or services to be lower-tier subcontracted.
  - (ii) Identification of the type of lower-tier subcontract to be used.
  - (iii) Identification of the proposed lower-tier subcontractor.
  - (iv) The proposed lower-tier subcontract price.
  - (v) The lower-tier subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other subcontract provisions.
  - (vi) The lower-tier subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this subcontract.

- (vii) A negotiation memorandum reflecting --
  - a. The principal elements of the lower-tier subcontract price negotiations;
  - b. The most significant considerations controlling establishment of initial or revised prices;
  - c. The reason cost or pricing data were or were not required;
  - d. The extent, if any, to which the Subcontractor did not rely on the lower-tier subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
  - e. The extent to which it was recognized in the negotiation that the lower-tier subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Subcontractor and the lower-tier subcontractor; and the effect of any such defective data on the total price negotiated;
  - f. The reasons for any significant difference between the Subcontractor's price objective and the price negotiated; and
  - g. A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- 2. The Subcontractor is not required to notify the NREL Subcontract Administrator in advance of entering into any lower-tier subcontract for which consent is not required under paragraph (C), (D), or (E) or this clause.
- G. Unless the consent or approval specifically provides otherwise, neither consent by the NREL Subcontract Administrator to any subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination --
  - 1. Of the acceptability of any subcontract terms or conditions;
  - 2. Of the allowability of any cost under this subcontract; or
  - 3. To relieve the Subcontractor of any responsibility for performing this subcontract.
- H. No lower-tier subcontract or modification thereof placed under this subcontract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type lower-tier subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).
- I. The Subcontractor shall give the NREL Subcontract Administrator immediate written notice of any action or suit filed and prompt notice of any claim made against the Subcontractor by any lower-

tier subcontractor or vendor that, in the opinion of the Subcontractor, may result in litigation related in any way to this subcontract, with respect to which the Subcontractor may be entitled to reimbursement from NREL/Government.

- J. NREL/Government reserves the right to review the Subcontractor's purchasing system as set forth in FAR Subpart 44.3.
- K. Paragraphs (D) and (F) of this clause do not apply to the following lower-tier subcontracts, which were evaluated during negotiations:

Lower tier subcontracts evaluated during negotiations are identified in the subcontract schedule.

**CLAUSE - LOWER-TIER SUBCONTRACTORS AND OUTSIDE ASSOCIATES  
AND CONSULTANTS (ARCHITECT-ENGINEER SERVICES) (AUG 1998)**

***Derived from FAR 52.244-4***

Any lower-tier subcontractors and outside associates or consultants required by the Subcontractor in connection with the services covered by the subcontract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Subcontractor shall obtain the NREL Subcontract Administrator's written consent before making any substitution for these lower-tier subcontractors, associates, or consultants.

**CLAUSE - SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL  
COMPONENTS (OCT 1995)**

***Derived from FAR 52.244-6***

***(Applies to solicitations and subcontracts for supplies or services other than commercial items)***

- (a) Definitions.

"Commercial item," as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions. "Subcontract," as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.
- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:
  - (1) 52.222-26, Equal Opportunity (E.O.11246);
  - (2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C.4212(a));

(3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C.793); and

(4) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C.1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

**CLAUSE - GOVERNMENT PROPERTY - (FIXED PRICE SUBCONTRACTS) (DEC 1989) AND ALTERNATE II (JUL 1985)**

***Derived from FAR 52.245-2***

***(Use Alternate II for educational institutions or other non-profit institutions)***

**A. Government-furnished property.**

1. NREL shall deliver to the Subcontractor, for use in connection with and under the terms of this subcontract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Subcontractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").
2. The delivery or performance dates for this subcontract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as-is") will be delivered to the Subcontractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Subcontractor to meet the subcontract's delivery or performance dates.
3. If Government-furnished property is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt of it, notify the NREL Subcontract Administrator, detailing the facts, and, as directed by the NREL Subcontract Administrator and at NREL expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Subcontractor, the NREL Subcontract Administrator shall make an equitable adjustment as provided in paragraph (H) of this clause.
4. If Government-furnished property is not delivered to the Subcontractor by the required time, the NREL Subcontract Administrator shall, upon the Subcontractor's timely written request, make a determination of the delay, if any, caused the Subcontractor and shall make an equitable adjustment in accordance with paragraph (H) of this clause.

**B. Changes in Government-furnished property.**

1. The NREL Subcontract Administrator may, by written notice,
  - (i) Decrease the Government-furnished property provided or to be provided under this subcontract, or



- (ii) Substitute other Government-furnished property for the property to be provided by NREL, or to be acquired by the Subcontractor, under this subcontract. The Subcontractor shall promptly take such action as the NREL Subcontract Administrator may direct regarding the removal, shipment, or disposal of the property covered by such notice.
  - 2. Upon the Subcontractor's written request, the NREL Subcontract Administrator shall make an equitable adjustment to the subcontract in accordance with paragraph (H) of this clause, if NREL has agreed in the Schedule to make the property available for performing this subcontract and there is any --
    - (i) Decrease or substitution in this property pursuant to subparagraph (B)(1) of this clause; or
    - (ii) Withdrawal of authority to use this property, if provided under any other subcontract or lease.
- C. Title in Government property.
- 1. The Government shall retain title to all Government-furnished property.
  - 2. All Government-furnished property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. However, special tooling accountable to this subcontract is subject to the provisions of the Special Tooling clause and is not subject to the provisions of the this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.
  - 3. Title to each item of facilities and special test equipment acquired by the Subcontractor under this subcontract shall pass to and vest in the Government when its use in performing this subcontract commences or when NREL/Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.
  - 4. If this subcontract contains a provision directing the Subcontractor to purchase material for which NREL will reimburse the Subcontractor as a direct item of cost under this subcontract --
    - (i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and
    - (ii) Title to all other material shall pass to and vest in the Government upon --
      - (a) Issuance of the material for use in subcontract performance;
      - (b) Commencement of processing of the material or its use in subcontract performance; or

- (c) Reimbursement of the cost of the material by NREL, whichever occurs first.

D. Use of Government property.

- 1. The Government property shall be used only for performing this subcontract, unless otherwise provided in this subcontract or approved by the NREL Subcontract Administrator.

E. Property administration.

- 1. The Subcontractor shall be responsible and accountable for all Government property provided under this subcontract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this subcontract.
- 2. The Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.
- 3. If damage occurs to Government property, the risk of which has been assumed by the Government, under this subcontract, NREL shall replace the items or the Subcontractor shall make such repairs as NREL directs. However, if the Subcontractor cannot effect such repairs within the time required, the Subcontractor shall dispose of the property as directed by the NREL Subcontract Administrator. When any property for which NREL is responsible is replaced or repaired, the NREL Subcontract Administrator shall make an equitable adjustment in accordance with paragraph (H) of this clause.
- 4. The Subcontractor represents that the subcontract price does not include any amount for repairs or replacement for which NREL is responsible. Repair or replacement of property for which the Subcontractor is responsible shall be accomplished by the Subcontractor at its own expense.

F. Access.

NREL/Government and all their designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

G. Risk of loss.

Unless otherwise provided in this subcontract, the Subcontractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Subcontractor or upon passage of title to the Government under paragraph (C) of this clause. However, the Subcontractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this subcontract.

H. Equitable adjustment.

When this clause specifies an equitable adjustment, it shall be made to any affected subcontract provision in accordance with the procedures of the Changes clause. When appropriate, the NREL

Subcontract Administrator may initiate an equitable adjustment in favor of NREL. The right to an equitable adjustment shall be the NREL Subcontract Administrator's exclusive remedy. NREL/Government shall not be liable to suit for breach of contract for --

1. Any delay in delivery of Government-furnished property;
2. Delivery of Government-furnished property in a condition not suitable for its intended use;
3. A decrease in or substitution of Government-furnished property; or
4. Failure to repair or replace Government property for which NREL is responsible.

I. Final accounting and disposition of Government property.

Upon completing this subcontract, or at such earlier dates as may be fixed by the NREL Subcontract Administrator, the Subcontractor shall submit, in a form acceptable to the NREL Subcontract Administrator, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this subcontract or delivered to NREL. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the NREL Subcontract Administrator. The net proceeds of any such disposal shall be credited to the subcontract price or shall be paid to NREL/Government as the NREL Subcontract Administrator directs.

J. Abandonment and restoration of Subcontractor's premises.

Unless otherwise provided herein, NREL --

1. May abandon any Government property in place, at which time all obligations of NREL/Government regarding such abandoned property shall cease; and
2. Has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon subcontract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if any Government property is substituted, then the equitable adjustment under paragraph (H) of this clause may properly include restoration or rehabilitation costs.

K. Communications.

All communications under this clause shall be in writing.

L. Overseas contracts.

If this subcontract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (whenever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

## ***Alternate II***

*(If this subcontract is for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research (See 35.014), substitute the following paragraphs (C) and (G) for paragraphs (C) and (G) of the basic clause)*

### **C. Title in Government property.**

1. The Government shall retain title to all Government-furnished property.
2. All Government-furnished property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.
3. Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the Subcontractor for the Government under this subcontract shall pass to and vest in the Government when its use in performing this subcontract commences, or when NREL/Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.
4. Title to equipment (and other tangible personal property) purchased with funds available for research and having an acquisition cost of less than \$5,000 shall vest in the Subcontractor upon acquisition or as soon thereafter as feasible; provided, that the Subcontractor obtained the NREL Subcontract Administrator's approval before each acquisition. Title to equipment purchased with funds available for research and having an acquisition cost of \$5,000 or more shall vest as set forth in the subcontract. If title to equipment vests in the Subcontractor under this subparagraph (C)(4), the Subcontractor agrees that no charge will be made to the Government for any depreciation, amortization, or use under any existing or future Government subcontract or lower-tier subcontract thereunder. The Subcontractor shall furnish the NREL Subcontract Administrator a list of all equipment to which title is vested in the Subcontractor under this subparagraph (C)(4) within ten (10) days following the end of the calendar quarter during which it was received.
5. Vesting title under this paragraph (C) is subject to civil rights legislation, 42 U.S.C.2000d. Before title is vested any by signing this subcontract, the Subcontractor accepts and agrees that --

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contemplated financial assistance (title to equipment).

\* \* \* \* \*

G. Limited risk of loss.

1. The term "Subcontractor's managerial personnel," as used in this paragraph (G), means the Subcontractor's directors, officers, and any of the Subcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of --
  - (i) All or substantially all of the Subcontractor's business;
  - (ii) All or substantially all of the Subcontractor's operation at any one plant, laboratory, or separate location at which the subcontract is being performed; or
  - (iii) A separate and complete major industrial operation connected with performing this subcontract.
2. The Subcontractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this subcontract (or, if an educational or nonprofit organization, for expenses incidental to such loss, destruction, or damage), except as provided in subparagraphs (3) and (4) below.
3. The Subcontractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this subcontract (including expenses incidental to such loss, destruction, or damage) --
  - (i) That results from a risk expressly required to be insured under this subcontract, but only to the extent of the insurance required to be purchased and maintained, or to the extent of insurance actually purchased and maintained, whichever is greater;
  - (ii) That results from a risk which is in fact covered by insurance or for which the Subcontractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
  - (iii) For which the Subcontractor is otherwise responsible under the express terms of this subcontract;
  - (iv) That results from willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel; or
  - (v) That results from a failure on the part of the Subcontractor, due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (E) of this clause.
4.
  - (i) If the Subcontractor fails to act as provided in subdivision (G)(3)(v) above, after being notified (by certified mail addressed to one of the Subcontractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such

failure was due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel.

- (ii) Furthermore, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Subcontractor can establish by clear and convincing evidence that such loss, destruction, or damage

--

- a. Did not result from the Subcontractor's failure to maintain an approved program or system; or
- b. Occurred while an approved program or system was maintained by the Subcontractor.

- 5. If the Subcontractor transfers Government property to the possession and control of a lower-tier subcontractor, the transfer shall not affect the liability of the Subcontractor for loss or destruction of, or damage to, the property as set forth above. However, the Subcontractor shall require the lower-tier subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage, to the property while in the lower-tier subcontractor's possession or control, except to the extent that the Subcontractor, with the advance approval of the NREL Subcontract Administrator, relieves the lower-tier subcontractor from such liability. In the absence of such approval, the lower-tier subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime subcontract.
- 6. Upon loss or destruction of, or damage to, Government property provided under this subcontract, the Subcontractor shall so notify the NREL Subcontract Administrator and shall communicate with the loss and salvage organization, if any, designated by the NREL Subcontract Administrator. With the assistance of any such organization, the Subcontractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the NREL Subcontract Administrator a statement of --
  - (i) The lost, destroyed, or damaged Government property;
  - (ii) The time and origin of the loss, destruction, or damage;
  - (iii) All known interests in commingled property of which the Government property is a part; and
  - (iv) The insurance, if any, covering any part of or interest in such commingled property.
- 7. The Subcontractor shall repair, renovate, and take such other action with respect to damaged Government property as the NREL Subcontract Administrator directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Subcontractor's) that separation is impractical, the Subcontractor may, with the approval of and subject to any conditions

imposed by the NREL Subcontract Administrator, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Subcontractor shall be entitled to an equitable adjustment in the subcontract price for the expenditures made in performing the obligations under this subparagraph (G)(7) in accordance with paragraph (H) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The NREL Subcontract Administrator shall give due regard to the Subcontractor's liability under this paragraph (G) when making any such equitable adjustment.

8. The Subcontractor represents that it is not including in the price, and agrees it will not hereafter include in any price to the Government, any charge or reserve for insurance (including any self-insurance fund or reserve) covering loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Subcontractor to carry such insurance under another provision of this subcontract.
9. In the event the Subcontractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, the Government property, the Subcontractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to or equitably reimburse the Government, as directed by the NREL Subcontract Administrator.
10. The Subcontractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the NREL Subcontract Administrator, the Subcontractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a lower-tier subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Subcontractor shall enforce for the benefit of the Government the liability of the lower-tier subcontractor for such loss, destruction, or damage.

#### **CLAUSE - IDENTIFICATION OF GOVERNMENT-FURNISHED PROPERTY (APR 1984)**

***Derived from FAR 52.245-3***

***(Applies to construction subcontracts if the subcontract Schedule, the specifications, or the drawings identify any Government-furnished property. The term "Schedule" as it appears in this clause shall hereafter have the meaning "Schedule, specifications, or drawings.")***

- A. NREL will furnish to the Subcontractor the property identified in the Schedule to be incorporated or installed into the work or used in performing the subcontract. The listed property will be furnished f.o.b. railroad cars at the place specified in the subcontract Schedule or f.o.b. truck at the project site. The Subcontractor is required to accept delivery, pay any demurrage or detention charges, and unload and transport the property to the job site at its own expense. When the property is delivered, the Subcontractor shall verify its quantity and condition and acknowledge receipt in writing to the NREL Subcontract Administrator. The Subcontractor shall also report in writing to the NREL Subcontract Administrator within twenty-four (24) hours of delivery any damage to or shortage of the property as

received. All such property shall be installed or incorporated into the work at the expense of the Subcontractor, unless otherwise indicated in this subcontract.

- B. Each item of property to be furnished under this clause shall be identified in the Schedule by quantity, item, and description.

**CLAUSE - GOVERNMENT-FURNISHED PROPERTY (SHORT FORM) (APR 1984)**

*Derived from FAR 52.245-4*

*(Applies to fixed price; time and material; labor hour subcontracts where Government Furnished Property acquisition cost is \$100,000 or less)*

- A. NREL/Government shall deliver to the Subcontractor, at the time and locations stated in this subcontract, the Government-furnished property described in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Subcontractor, the NREL Subcontract Administrator shall equitably adjust affected provisions of this subcontract in accordance with the Changes clause when --
  - 1. The Subcontractor submits a timely written request for an equitable adjustment; and
  - 2. The facts warrant an equitable adjustment.
- B. Title to Government-furnished property shall remain in the Government. The Subcontractor shall use the Government-furnished property only in connection with this subcontract. The Subcontractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for Government inspection at all reasonable times, unless the clause at Federal Acquisition Regulation 52.245-1, Property Records, is included in this subcontract.
- C. Upon delivery of Government-furnished property to the Subcontractor, the Subcontractor assumes the risk and responsibility for its loss or damage, except --
  - 1. For reasonable wear and tear;
  - 2. To the extent property is consumed in performing this subcontract; or
  - 3. As otherwise provided for by the provisions of this subcontract.
- D. Upon completing this subcontract, the Subcontractor shall follow the instructions of the NREL Subcontract Administrator regarding the disposition of all Government-furnished property not consumed in performing this subcontract or previously delivered to the Government. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the NREL Subcontract Administrator. The net proceeds of any such disposal shall be credited to the subcontract price or shall be paid to the Government as directed by the NREL Subcontract Administrator.
- E. If this subcontract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.



**CLAUSE - GOVERNMENT PROPERTY - TIME-AND-MATERIAL, OR  
LABOR-HOUR SUBCONTRACTS - (JAN 1986)**

*Derived from FAR 52.245-5*

*(Applies to subcontracts exceeding \$100,000)*

A. Government-furnished property.

1. The term "Subcontractor's managerial personnel," as used in paragraph (G) of this clause, means any of the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of --
  - (i) All or substantially all of the Subcontractor's business;
  - (ii) All or substantially all of the Subcontractor's operation at any one plant, or separate location at which the subcontract is being performed; or
  - (iii) A separate and complete major industrial operation connected with performing this subcontract.
2. NREL shall deliver to the Subcontractor, for use in connection with and under the terms of this subcontract, the Government-furnished property described in the Schedule or specifications, together with such related data and information as the Subcontractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").
3. The delivery or performance dates for this subcontract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Subcontractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Subcontractor to meet the subcontract's delivery or performance dates.
4. If Government-furnished property is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt, notify the NREL Subcontract Administrator, detailing the facts, and, as directed by the NREL Subcontract Administrator and at Government expense, either effect repairs or modification or return or otherwise dispose of the property. After completing the directed action and upon written request of the Subcontractor, the NREL Subcontract Administrator shall make an equitable adjustment as provided in paragraph (H) of this clause.
5. If Government-furnished property is not delivered to the Subcontractor by the required time or times, the NREL Subcontract Administrator shall, upon the Subcontractor's timely written request, make a determination of the delay, if any, caused the Subcontractor and shall make an equitable adjustment in accordance with paragraph (H) of this clause.

B. Changes in Government-furnished property.

1. The NREL Subcontract Administrator may, by written notice,
  - (i) Decrease the Government-furnished property provided or to be provided under this subcontract; or

- (ii) Substitute other Government-furnished property for the property to be provided by NREL or to be acquired by the Subcontractor for NREL under this subcontract. The Subcontractor shall promptly take such action as the NREL Subcontract Administrator may direct regarding the removal, shipment, or disposal of the property covered by this notice.
- 2. Upon the Subcontractor's written request, the NREL Subcontract Administrator shall make an equitable adjustment to the subcontract in accordance with paragraph (H) of this clause, if NREL has agreed in the Schedule to make such property available for performing this subcontract and there is any --
  - (i) Decrease or substitution in this property pursuant to subparagraph (B)(1) above; or
  - (ii) Withdrawal of authority to use property, if provided under any other subcontract or lease.

C. Title.

- 1. The Government shall retain title to all Government-furnished property.
- 2. Title to all property purchased by the Subcontractor for which the Subcontractor is entitled to be reimbursed as a direct item of cost under this subcontract shall pass to and vest in the Government upon the vendor's delivery of such property.
- 3. Title to all other property, the cost of which is reimbursable to the Subcontractor, shall pass to and vest in the Government upon --
  - (i) Issuance of the property for use in subcontract performance;
  - (ii) Commencement of processing of the property or use in subcontract performance; or
  - (iii) Reimbursement of the cost of the property by NREL, whichever occurs first.
- 4. All Government-furnished property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

D. Use of Government property.

The Government property shall be used only for performing this subcontract, unless otherwise provided in this subcontract or approved by the NREL Subcontract Administrator.

E. Property administration.

1. The Subcontractor shall be responsible and accountable for all Government property provided under the subcontract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this subcontract.
2. The Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5.
3. If damage occurs to Government property, the risk of which has been assumed by the Government under this subcontract, NREL shall replace the items or the Subcontractor shall make such repairs as NREL directs. However, if the Subcontractor cannot effect such repairs within the time required, the Subcontractor shall dispose of the property as directed by the NREL Subcontract Administrator. When any property for which NREL is responsible is replaced or repaired, the NREL Subcontract Administrator shall make an equitable adjustment in accordance with paragraph (H) of this clause.

F. Access.

NREL/Government and all their designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

G. Limited risk of loss.

1. The Subcontractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this subcontract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.
2. The Subcontractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this subcontract (including expenses incidental to such loss, destruction, or damage) --
  - (i) That results from a risk expressly required to be insured under this subcontract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;
  - (ii) That results from a risk that is in fact covered by insurance or for which the Subcontractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
  - (iii) For which the Subcontractor is otherwise responsible under the express terms of this subcontract;
  - (iv) That results from willful misconduct or lack of good faith on the part of the Subcontractor's management personnel; or

- (v) That results from a failure on the part of the Subcontractor, due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (E) of this clause.
- 3.
- (i) If the Subcontractor fails to act as provided by subdivision (G)(2)(v) above, after being notified (by certified mail addressed to one of the Subcontractor's managerial personnel) of NREL's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel.
  - (ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Subcontractor can establish by clear and convincing evidence that such loss, destruction, or damage --
    - (a) Did not result from the Subcontractor's failure to maintain an approved program or system; or
    - (b) Occurred while an approved program or system was maintained by the Subcontractor.
4. If the Subcontractor transfers Government property to the possession and control of a lower-tier subcontractor, the transfer shall not affect the liability of the Subcontractor for loss or destruction of, or damage to, the property as set forth above. However, the Subcontractor shall require the lower-tier subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the lower-tier subcontractor's possession or control, except to the extent that the lower-tier subcontract, with the advance approval of the NREL Subcontract Administrator, relieves the Subcontractor from such liability. In the absence of such approval, the lower-tier subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the subcontract.
5. Upon loss or destruction of, or damage to, Government property provided under this subcontract, the Subcontractor shall so notify the NREL Subcontract Administrator and shall communicate with the loss and salvage organization, if any, designated by the NREL Subcontract Administrator. With the assistance of any such organization, the Subcontractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the NREL Subcontract Administrator a statement of --
- (i) The lost, destroyed, or damaged Government property;
  - (ii) The time and origin of the loss, destruction, or damage;

- (iii) All known interests in commingled property of which the Government property is a part; and
  - (iv) The insurance, if any, covering any part of or interest in such commingled property.
6. The Subcontractor shall repair, renovate, and take such other action with respect to damaged Government property as the NREL Subcontract Administrator directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Subcontractor's) that separation is impractical, the Subcontractor may, with the approval of and subject to any conditions imposed by the NREL Subcontract Administrator, sell such property for the account of NREL and the Government. Such sales may be made in order to minimize the loss to NREL/Government, to permit the resumption of business, or to accomplish a similar purpose. The Subcontractor shall be entitled to an equitable adjustment in the subcontract price for the expenditures made in performing the obligations under this subparagraph (G)(6) in accordance with paragraph (H) of this clause. However, NREL may directly reimburse the loss and salvage organization for any of their charges. The NREL Subcontract Administrator shall give due regard to the Subcontractor's liability under this paragraph (G) when making any such equitable adjustment.
7. The Subcontractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that NREL may have expressly required the Subcontractor to carry such insurance under another provision of this subcontract.
8. In the event the Subcontractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Subcontractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, NREL and the Government, as directed by the NREL Subcontract Administrator.
9. The Subcontractor shall do nothing to prejudice NREL/Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the NREL Subcontract Administrator, the Subcontractor shall, at the Government's expense, furnish to NREL/Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of NREL/Government) in obtaining recovery. In addition, where a lower-tier subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Subcontractor shall enforce for the benefit of NREL and the Government the liability of the lower-tier subcontractor for such loss, destruction, or damage.

H. Equitable adjustment.

When this clause specifies an equitable adjustment, it shall be made to any affected subcontract provision in accordance with the procedures of the Changes clause. When appropriate, the NREL Subcontract Administrator may initiate an equitable adjustment in favor of NREL. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy. NREL and the Government shall not be liable to suit for breach of subcontract for --

- 1. Any delay in delivery of Government-furnished property;
- 2. Delivery of Government-furnished property in a condition not suitable for its intended use;
- 3. A decrease in or substitution of Government-furnished property; or

4. Failure to repair or replace Government property for which NREL is responsible.

I. Final accounting and disposition of Government property.

Upon completing this subcontract, or at such earlier dates as may be fixed by the NREL Subcontract Administrator, the Subcontractor shall submit, in a form acceptable to the NREL Subcontract Administrator, inventory schedules covering all items of Government property not consumed in performing this subcontract or delivered to NREL. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the NREL Subcontract Administrator. The net proceeds of any such disposal shall be credited to the cost of the work covered by this subcontract or paid to NREL/Government as directed by the NREL Subcontract Administrator. The foregoing provisions shall apply to scrap from Government property; **provided**, however, that the NREL Subcontract Administrator may authorize or direct the Subcontractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Subcontractor's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Subcontractor's established accounting procedures.

J. Abandonment and restoration of Subcontractor premises.

Unless otherwise provided herein, NREL --

1. May abandon any Government property in place, at which time all obligations of NREL and the Government regarding such abandoned property shall cease; and
2. Has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or subcontract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (H) of this clause may properly include restoration or rehabilitation costs.

K. Communications.

All communications under this clause shall be in writing.

L. Overseas subcontracts.

If this subcontract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

**CLAUSE - INSPECTION OF SUPPLIES--FIXED PRICE (AUG 1996)**

***Derived from FAR 52.246-2***

***(This clause applies to subcontracts for supplies or services that involve furnishing supplies.***

***See 52.246-4 for subcontracts for services)***

- A. Definition. "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.
- B. The Subcontractor shall provide and maintain an inspection system acceptable to NREL covering supplies under this subcontract and shall tender to NREL for acceptance only supplies that have been

inspected in accordance with the inspection system and have been found by the Subcontractor to be in conformity with subcontract requirements. As part of the system, the Subcontractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to NREL/Government during subcontract performance and for as long afterwards as the subcontract requires. NREL/Government may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the subcontract work. The right of review, whether exercised or not, does not relieve the Subcontractor of the obligations under the subcontract.

- C. NREL/Government has the right to inspect and test all supplies called for by the subcontract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. NREL/Government shall perform inspections and tests in a manner that will not unduly delay the work. NREL/Government assumes no contractual obligation to perform any inspection and test for the benefit of the Subcontractor unless specifically set forth elsewhere in this subcontract.
- D. If NREL/Government performs inspection or test on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall furnish, and shall require lower-tier subcontractors to furnish, at no increase in subcontract price, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the subcontract, The NREL/Government shall bear the expense of NREL inspections or tests made at other than the Subcontractor's or lower-tier subcontractor's premises; provided, that in case of rejection, the NREL/Government shall not be liable for any reduction in the value of inspection or test samples.
- E.
  - 1. When supplies are not ready at the time specified by the Subcontractor for inspection or test, the NREL Subcontract Administrator may charge to the Subcontractor the additional costs of inspection or test.
  - 2. The NREL Subcontract Administrator may also charge the Subcontractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.
- F. NREL has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with subcontract requirements. NREL may reject nonconforming supplies with or without disposition instructions.
- G. The Subcontractor shall remove supplies rejected or required to be corrected. However, the NREL Subcontract Administrator may require or permit correction in place, promptly after notice, by and at the expense of the Subcontractor. The Subcontractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.
- H. If the Subcontractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the NREL/Government may either --
  - 1. By subcontract or otherwise, remove, replace, or correct the supplies and charge the cost to the Subcontractor, or

2. Terminate the subcontract for default. Unless the Subcontractor corrects or replaces the supplies within the delivery schedule, the NREL Subcontract Administrator may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.
- I. 1. If this subcontract provides for the performance of quality assurance at source, and if requested by NREL/Government, the Subcontractor shall furnish advance notification of the time --
    - (i) When Subcontractor inspection or tests will be performed in accordance with the terms and conditions of the subcontract; and
    - (ii) When the supplies will be ready for inspection.
  2. NREL's request shall specify the period and method of the advance notification and the NREL/Government representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if NREL/Government representative is in residence in the Subcontractor's plant, nor more than seven (7) workdays in other instances.
- J. NREL shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the subcontract. NREL's failure to inspect and accept or reject the supplies shall not relieve the Subcontractor from responsibility, nor impose liability on NREL/Government, for nonconforming supplies.
- K. Inspections and tests by NREL/Government do not relieve the Subcontractor of responsibility for defects or other failures to meet subcontract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the subcontract.
- L. If acceptance is not conclusive for any of the reasons in paragraph (K) hereof, NREL/Government, in addition to any other rights and remedies provided by law, or under other provisions of this subcontract, shall have the right to require the Subcontractor--
1. At no increase in subcontract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Subcontractor's plant at the NREL Subcontract Administrator's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Subcontractor and the NREL Subcontract Administrator; provided, that the NREL Subcontract Administrator may require a reduction in subcontract price if the Subcontractor fails to meet such delivery schedule, or
  2. Within a reasonable time after receipt by the Subcontractor of notice of defects or nonconformance, to repay such portion of the subcontract as is equitable under the circumstances if the NREL Subcontract Administrator elects not to require correction or replacement. When supplies are returned to the Subcontractor, the Subcontractor shall bear the transportation cost from the original point of delivery to the Subcontractor's plant and return to the original point when that point is not the Subcontractor's plant. If the Subcontractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of ten (10) days (or such longer period as the NREL Subcontract



Administrator may authorize in writing) after receipt of notice from the NREL Subcontract Administrator specifying such failure, NREL shall have the right by subcontract or otherwise to replace or correct such supplies and charge to the Subcontractor the cost occasioned NREL thereby.

**CLAUSE - INSPECTION OF SERVICES--FIXED PRICE (AUG 1996)**

***Derived from FAR 52.246-4***

***(This clause applies for subcontracts for services or supplies that involve furnishing services.***

***See 52.246-2 for subcontracts for supplies)***

A. Definitions.

"Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Subcontractor shall provide and maintain an inspection system acceptable to NREL covering the services under this subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to NREL/Government during subcontract performance and for as long afterwards as the subcontract requires.

C. NREL/Government have the right to inspect and test all services called for by the subcontract, to the extent practicable at all times and places during the term of the subcontract. NREL/Government shall perform inspections and tests in a manner that will not unduly delay the work.

D. If NREL/Government performs inspections or tests on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall furnish, and shall require lower-tier subcontractors to furnish, at no increase in subcontract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

E. If any of the services do not conform with subcontract requirements, NREL may require the Subcontractor to perform the services again in conformity with subcontract requirements, at no increase in subcontract amount. When the defects in services cannot be corrected by reperformance, NREL may--

1. Require the Subcontractor to take necessary action to ensure that future performance conforms to subcontract requirements; and

2. Reduce the subcontract price to reflect the reduced value of the services performed.

F. If the Subcontractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with subcontract requirements, NREL may--

1. By subcontract or otherwise, perform the services and charge to the Subcontractor any cost incurred by NREL that is directly related to the performance of such service; or

2. Terminate the subcontract for default.

**CLAUSE - INSPECTION OF SERVICES--COST-REIMBURSEMENT (APR 1984)**

***Derived from FAR 52.246-5***

- A. Definition. "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.
- B. The Subcontractor shall provide and maintain an inspection system acceptable to NREL covering the services under this subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to NREL/Government during subcontract performance and for as long afterwards as the subcontract requires.
- C. NREL/Government have the right to inspect and test all services called for by the subcontract, to the extent practicable at all places and times during the term of the subcontract. Such inspections and tests shall be performed in a manner that will not unduly delay the work.
- D. If any of the services performed do not conform with subcontract requirements, NREL may require the Subcontractor to perform the services again in conformity with subcontract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, NREL may--
  - 1. Require the Subcontractor to take necessary action to ensure that future performance conforms to subcontract requirements; and
  - 2. Reduce any fee payable under the subcontract to reflect the reduced value of the services performed.
- E. If the Subcontractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with subcontract requirements, NREL may--
  - 1. By subcontract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances ;or
  - 2. Terminate the subcontract for default.

**CLAUSE - INSPECTION - TIME-AND-MATERIAL AND LABOR-HOUR (JAN 1986)**

***Derived from FAR 52.246-6***

- A. Definition.

"Subcontractors managerial personnel," as used in this clause, means any of the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of --

  - 1. All or substantially all of the Subcontractor's business;
  - 2. All or substantially all of the Subcontractor's operation at any one plant or separate location at which the subcontract is being performed; or

3. A separate and complete major industrial operation connected with the performance of this subcontract.

"Materials," as used in this clause, includes data when the subcontract does not include the Warranty of Data clause.

- B. The Subcontractor shall provide and maintain an inspection system acceptable to NREL covering the material, fabricating methods, work, and services under this subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to NREL/Government during subcontract performance and for as long afterwards as the subcontract requires.
- C. NREL/Government has the right to inspect and test all materials furnished and services performed under this subcontract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. NREL/Government may also inspect the plant or plants of the Subcontractor or any lower-tier subcontractor engaged in subcontract performance. The Government/ NREL shall perform inspections and tests in a manner that will not unduly delay the work.
- D. If NREL/Government performs inspection or test on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall furnish and shall require lower-tier subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- E. Unless otherwise specified in the subcontract, NREL shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted sixty (60) days after the date of delivery, unless accepted earlier.
- F. At any time during subcontract performance but not later than six (6) months (or such other time as may be specified in the subcontract) after acceptance of the services or materials last delivered under this subcontract, NREL may require the Subcontractor to replace or correct services or materials that at time of delivery failed to meet subcontract requirements. Except as otherwise specified in paragraph (H) of this clause, the cost of replacement or correction shall be determined under the Payment Under Time-and-Materials and Labor-Hour Contracts clause, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Subcontractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.
- G.
  1. If the Subcontractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by NREL), NREL may--
    - (i) By subcontract or otherwise, perform the replacement or correction, charge to the Subcontractor any increased cost, or deduct such increased cost from any amounts, paid or due under this subcontract; or
    - (ii) Terminate this subcontract for default.

2. Failure to agree to the amount of increased cost to be charged to the Subcontractor shall be a dispute.
- H. Notwithstanding paragraphs (F) and (G) above, NREL may at any time require the Subcontractor to remedy by correction or replacement, without cost to NREL, any failure by the Subcontractor to comply with the requirements of this subcontract, if the failure is due to--
1. Fraud, lack of good faith, or willful misconduct on the part of the Subcontractor's managerial personnel; or
  2. The conduct of one or more of the Subcontractor's employees selected or retained by the Subcontractor after any of the Subcontractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.
- I. This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this subcontract.
- J. The Subcontractor has no obligation or liability under this subcontract to correct or replace materials and services that at time of delivery do not meet subcontract requirements, except as provided in this clause or as may be otherwise specified in the subcontract.
- K. Unless otherwise specified in the subcontract, the Subcontractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

**CLAUSE - INSPECTION OF RESEARCH AND DEVELOPMENT  
(SHORT FORM) (APR 1984)**

***Derived from FAR 52.246-9***

NREL/Government have the right to inspect and evaluate the work performed or being performed under the subcontract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If NREL/Government perform inspections or evaluations on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall furnish and shall require lower-tier subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

**CLAUSE - INSPECTION OF CONSTRUCTION (AUG 1996)**

***Derived from FAR 52.246-12***

***(Applies to construction subcontracts)***

- A. Definition.
- "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.
- B. The Subcontractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the subcontract conforms to subcontract requirements. The Subcontractor shall maintain complete inspection records and make them available to

NREL/Government. All work shall be conducted under the general direction of the NREL Subcontract Administrator and is subject to NREL/Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the subcontract.

- C. NREL/Government inspections and tests are for the sole benefit of NREL/Government and do not --
1. Relieve the Subcontractor of responsibility for providing adequate quality control measures;
  2. Relieve the Subcontractor of responsibility for damage to or loss of the material before acceptance;
  3. Constitute or imply acceptance; or
  4. Affect the continuing rights of NREL/Government after acceptance of the completed work under paragraph (I) of this section.
- D. The presence or absence of a NREL/Government inspector does not relieve the Subcontractor from any subcontract requirement, nor is the inspector authorized to change any term or condition of the specification without the NREL Subcontract Administrator's written authorization.
- E. The Subcontractor shall promptly furnish, at no increase in subcontract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the NREL Subcontract Administrator. NREL may charge to the Subcontractor any additional cost of inspection or test when work is not ready at the time specified by the Subcontractor for inspection or test, or when prior rejection makes reinspection or retest necessary. NREL/Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the subcontract.
- F. The Subcontractor shall, without charge, replace or correct work found by NREL not to conform to subcontract requirements, unless in the public interest NREL consents to accept the work with an appropriate adjustment in subcontract price. The Subcontractor shall promptly segregate and remove rejected material from the premises.
- G. If the Subcontractor does not promptly replace or correct rejected work, NREL may--
1. By subcontract or otherwise, replace or correct the work and charge the cost to the Subcontractor; or
  2. Terminate for default the Subcontractor's right to proceed.
- H. If, before acceptance of the entire work, NREL decides to examine already completed work by removing it or tearing it out, the Subcontractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Subcontractor or its lower-tier subcontractors, the Subcontractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet subcontract requirements, the NREL Subcontract Administrator shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

- I. Unless otherwise specified in the subcontract, NREL shall accept, as promptly as practicable after completion and inspection, all work required by the subcontract or that portion of the work the NREL Subcontract Administrator determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or NREL's rights under any warranty or guarantee.

**CLAUSE - WARRANTY OF CONSTRUCTION (MAR 1994) ALTERNATE I (APR 1984)**

*Derived from FAR 52.246-21*

*(Applies to construction subcontracts)*

- A. In addition to any other warranties in this subcontract, the Subcontractor warrants, except as provided in paragraph (J) of this clause, that work performed under this subcontract conforms to the subcontract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Subcontractor or any Subcontractor or supplier at any tier.
- B. This warranty shall continue for a period of one (1) year from the date of final acceptance of the work. If NREL/Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one (1) year from the date NREL/Government takes possession.
- C. The Subcontractor shall remedy at the Subcontractor's expense any failure to conform, or any defect. In addition, the Subcontractor shall remedy at the Subcontractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of --
1. The Subcontractor's failure to conform to subcontract requirements, or
  2. Any defect of equipment, material, workmanship, or design furnished.
- D. The Subcontractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Subcontractor's warranty with respect to the work repaired or replaced will run for one (1) year from the date of repair or replacement.
- E. The NREL Subcontract Administrator shall notify the Subcontractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- F. If the Subcontractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, NREL/Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Subcontractor's expense.
- G. With respect to all warranties, express or implied, from lower-tier subcontractors, manufacturers, or suppliers for work performed and materials furnished under this subcontract, the Subcontractor shall --
1. Obtain all warranties that would be given in normal commercial practice;
  2. Require all warranties to be executed, in writing, for the benefit of NREL/Government, if directed by the NREL Subcontract Administrator; and
  3. Enforce all warranties for the benefit of NREL/Government, if directed by the NREL Subcontract Administrator.

- H. In the event the Subcontractor's warranty under paragraph (B) of this clause has expired, NREL/Government may bring suit at its expense to enforce a lower-tier subcontractor's, manufacturer's, or supplier's warranty.
- I. Unless a defect is caused by the negligence of the Subcontractor or lower-tier subcontractor or supplier at any tier, the Subcontractor shall not be liable for the repair of any defects of material or design furnished by NREL nor for the repair of any damage that results from any defect in Government-furnished material or design.
- J. This warranty shall not limit NREL's/Government's rights under the Inspection and Acceptance clause of this subcontract with respect to latent defects, gross mistakes, or fraud.

***Alternate I (APR 1984)***

***(If NREL specifies in the subcontract the use of any equipment by "brand and model," following paragraph (K) shall be added to the basic clause:)***

- K. Defects in design or manufacture of equipment specified by NREL on a "brand name and model" basis, shall not be included in this warranty. In this event, the Subcontractor shall require any lower-tier subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to NREL/Government.

**CLAUSE - PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JAN 1997)**

***Derived from FAR 52.247-63 (FD)***

- A. "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United states.  
  
"United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.  
  
"U.S.-flag air carrier," as used in this clause, means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- B. Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government Contractors and Subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- C. The Subcontractor agrees, in performing work under this subcontract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

- D. In the event that the Subcontractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Subcontractor shall include a statement on vouchers involving such transportation essentially as follows:

**STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS**

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): *(State reasons):*

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- E. The Subcontractor shall include the substance of this clause, including this paragraph (E), in each lower-tier subcontract or purchase under this subcontract that may involve international air transportation.

**CLAUSE - TERMINATION FOR CONVENIENCE OF NREL/GOVERNMENT (FIXED PRICE) (SHORT FORM)(APR 1984)**

***Derived from FAR 52.249-1 (FD)***

***(Applies to fixed price subcontracts of \$100,000 or less, except subcontracts for research and development work with educational or nonprofit institutions; or subcontracts for architect-engineer services; or subcontracts for facilities)***

The NREL Subcontract Administrator, by written notice, may terminate this subcontract, in whole or in part, when it is in NREL's/Government's interest. If this subcontract is terminated, the rights, duties, and obligations of the parties, including compensation to the Subcontractor, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this subcontract.

**CLAUSE - TERMINATION FOR CONVENIENCE OF NREL/GOVERNMENT (FIXED PRICE) (SEP 1996)**

***Derived from FAR 52.249-2 (FD)***

***(Applies to fixed price subcontracts exceeding \$100,000, except subcontracts for research and development work with educational or nonprofit institutions; or subcontracts for architect-engineer services; or subcontracts for facilities)***

- A. NREL may terminate performance of work under this subcontract in whole or, from time to time, in part if the NREL Subcontract Administrator determines that a termination is in NREL's/Government's interest. The NREL Subcontract Administrator shall terminate by delivering to the Subcontractor a Notice of Termination specifying the extent of termination and the effective date.
- B. After receipt of a Notice of Termination, and except as directed by the NREL Subcontract Administrator, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
1. Stop work as specified in the notice.
  2. Place no further subcontracts or orders (referred to as lower-tier subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the subcontract.



3. Terminate all lower-tier subcontracts to the extent they relate to the work terminated.
  4. Assign to NREL, as directed by the NREL Subcontract Administrator, all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated, in which case NREL shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  5. With approval or ratification to the extent required by the NREL Subcontract Administrator, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts; the approval or ratification will be final for purposes of this clause.
  6. As directed by the NREL Subcontract Administrator, transfer title to the Government and deliver to NREL--
    - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
    - (ii) The completed or partially completed plans, drawings, information, and other property that, if the subcontract had been completed, would be required to be furnished to NREL.
  7. Complete performance of the work not terminated.
  8. Take any action that may be necessary, or that the NREL Subcontract Administrator may direct, for the protection and preservation of the property related to this subcontract that is in the possession of the Subcontractor and in which the Government has or may acquire an interest.
  9. Use its best efforts to sell, as directed or authorized by the NREL Subcontract Administrator, any property of the types referred to in subparagraph (B)(6) of this clause; **provided**, however, that the Subcontractor;
    - (i) Is not required to extend credit to any purchaser; and
    - (ii) May acquire the property under the conditions prescribed by, and at prices approved by, the NREL Subcontract Administrator. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by NREL under this subcontract, credited to the price or cost of the work, or paid in any other manner directed by the NREL Subcontract Administrator.
- C. The Subcontractor may submit complete termination inventory schedules no later than one hundred twenty (120) days from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator within this one hundred twenty (120)-day period.
- D. After expiration of the plant clearance period as defined in Subpart 45.6 for the Federal Acquisition Regulation, the Subcontractor may submit to the NREL Subcontract Administrator a list, certified as to the quantity and quality, of termination inventory not previously disposed of, excluding items

authorized for disposition by the NREL Subcontract Administrator. The Subcontractor may request NREL/Government to remove those items or enter into an agreement for their storage. Within fifteen (15) days, NREL/Government will accept title to those items and remove them or enter into a storage agreement. The NREL Subcontract Administrator may verify the list upon removal of the items, or if stored, within forty-five (45) days from submission of the list, and shall correct the list, as necessary, before final settlement.

- E. After termination, the Subcontractor shall submit a final termination settlement proposal to the NREL Subcontract Administrator in the form and with the certification prescribed by the NREL Subcontract Administrator. The Subcontractor shall submit the proposal promptly, but no later than one (1) year from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator upon written request of the Subcontractor within this one (1)-year period. However, if the NREL Subcontract Administrator determines that the facts justify it, a termination settlement proposal may be received and acted on after one (1) year or any extension. If the Subcontractor fails to submit the proposal within the time allowed, the NREL Subcontract Administrator may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.
- F. Subject to paragraph (D) of this clause, the Subcontractor and the NREL Subcontract Administrator may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (F) or paragraph (G) of this clause, exclusive of costs shown in subparagraph (G)(3) of this clause, may not exceed the total subcontract price as reduced by --
1. The amount of payments previously made; and
  2. The subcontract price of work not terminated.

The subcontract shall be amended, and the Subcontractor paid the agreed amount. Paragraph (G) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

- G. If the Subcontractor and the NREL Subcontract Administrator fail to agree on the whole amount to be paid because of the termination of work, the NREL Subcontract Administrator shall pay the Subcontractor the amounts determined by the NREL Subcontract Administrator as follows, but without duplication of any amounts agreed on under paragraph (F) of this clause:
1. The subcontract price for completed supplies or services accepted by NREL (or sold or acquired under subparagraph (B) (9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.
  2. The total of --
    - (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (G)(1) of this clause;

- (ii) The cost of settling and paying termination settlement proposals under terminated lower-tier subcontracts that are properly chargeable to the terminated portion of the subcontract if not included in subdivision (G)(2)(i) of this clause; and
  - (iii) A sum, as profit on subdivision (G)(2)(i) of this clause, determined by the NREL Subcontract Administrator under 49.202 of the Federal Acquisition Regulation, in effect on the date of this subcontract, to be fair and reasonable; however, if it appears that the Subcontractor would have sustained a loss on the entire subcontract had it been completed, the NREL Subcontract Administrator shall allow no profit under this subdivision (G)(2)(iii) and shall reduce the settlement to reflect the indicated rate of loss.
- 3. The reasonable costs of settlement of the work terminated, including --
  - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
  - (ii) The termination and settlement of lower-tier subcontracts (excluding the amounts of such settlements); and
  - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- H. Except for normal spoilage, and except to the extent that NREL/Government expressly assumed the risk of loss, the NREL Subcontract Administrator shall exclude from the amounts payable to the Subcontractor under paragraph (G) of this clause, the fair value, as determined by the NREL Subcontract Administrator, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to NREL/Government or to a buyer.
- I. The cost principles and procedures of Part 31 of the Federal Acquisition Regulations, in effect on the date of this subcontract, shall govern all costs claimed, agreed to, or determined under this clause.
- J. The Subcontractor shall have the right of appeal, under the Disputes clause, from any determination made by the NREL Subcontract Administrator under paragraph (E), (G), or (I) of this clause, except that if the Subcontractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (E) or (I), respectively, and failed to request a time extension, there is no right of appeal.
- K. In arriving at the amount due the Subcontractor under this clause, there shall be deducted--
  - 1. All unliquidated advance or other payments to the Subcontractor under the terminated portion of the subcontract;
  - 2. Any claim which NREL/Government has against the Subcontractor under this clause; and
  - 3. The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Subcontractor or sold under the provisions of this clause and not recovered by or credited to NREL/Government.

- L. If the termination is partial, the Subcontractor may file a proposal with the NREL Subcontract Administrator for an equitable adjustment of the price(s) of the continued portion of the subcontract. The NREL Subcontract Administrator shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this clause shall be requested within ninety (90) days from the effective date of termination unless extended in writing by the NREL Subcontract Administrator.
- M. 1. NREL may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the subcontract, if the NREL Subcontract Administrator believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
2. If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to NREL/Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by the NREL Subcontract Administrator because of the circumstances.
- N. Unless otherwise provided in this subcontract or by statute, the Subcontractor shall maintain all records and documents relating to the terminated portion of this subcontract for three (3) years after final settlement. This includes all books and other evidence on the Subcontractor's costs and expenses under this subcontract. The Subcontractor shall make these records and documents available to NREL/Government, at the Subcontractor's office, at all reasonable times, without any direct charge. If approved by the NREL Subcontract Administrator, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

**CLAUSE - TERMINATION FOR CONVENIENCE OF NREL/GOVERNMENT (SERVICES)  
(SHORT FORM) (APR 1984)  
*Derived from FAR 52.249-4 (FD)***

The NREL Subcontract Administrator, by written notice, may terminate this subcontract, in whole or in part, when it is in NREL's/Government's best interest. If this subcontract is terminated, NREL shall be liable only for payment under the payment provisions of this subcontract for services rendered before the effective date of termination.

**CLAUSE - TERMINATION FOR CONVENIENCE OF NREL/GOVERNMENT (EDUCATIONAL  
AND OTHER NONPROFIT INSTITUTIONS) (SEP 1996)  
*Derived from FAR 52.249-5 (FD)***

- A. NREL may terminate performance of work under this subcontract in whole or, from time to time, in part if the NREL Subcontract Administrator determines that a termination is in NREL's/Government's interest. The NREL Subcontract Administrator shall terminate by delivering to the Subcontractor a Notice of Termination specifying the extent of termination and the effective date.

- B. After receipt of a Notice of Termination and except as directed by the NREL Subcontract Administrator, the Subcontractor shall immediately proceed with the following obligations:
1. Stop work as specified in the notice.
  2. Place no further subcontracts or orders (referred to as lower-tier subcontracts in this clause), except as necessary to complete the continued portion of the subcontract.
  3. Terminate all applicable lower-tier subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination.
  4. Assign to NREL, as directed by the NREL Subcontract Administrator, all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated, in which case NREL shall have the right to settle or pay any termination settlement proposal arising out of those terminations.
  5. With approval or ratification to the extent required by the NREL Subcontract Administrator, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts; approval or ratification will be final for purposes of this clause.
  6. Transfer title to the Government (if not already transferred) and, as directed by the NREL Subcontract Administrator, deliver to NREL any information and items that, if the subcontract had been completed, would have been required to be furnished, including--
    - (i) Materials or equipment produced, in process, or acquired for the work terminated; and
    - (ii) Completed or partially completed plans, drawings, and information.
  7. Complete performance of the work not terminated.
  8. Take any action that may be necessary, or that the NREL Subcontract Administrator may direct, for the protection and preservation of the property related to this subcontract that is in the possession of the Subcontractor and in which the Government has or may acquire an interest.
  9. Use its best efforts to sell, as directed or authorized by the NREL Subcontract Administrator, termination inventory other than that retained by the Government under subparagraph (B)(6) of this clause; **provided**, however, that the Subcontractor--
    - (i) Is not required to extend credit to any purchaser; and
    - (ii) May acquire the property under the conditions prescribed by, and at prices approved by, the NREL Subcontract Administrator. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by NREL under this subcontract, credited to the price or cost of the work, or paid in any other manner directed by the NREL Subcontract Administrator.

- C. The Subcontractor shall submit complete termination inventory schedules no later than one hundred twenty (120) days from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator upon written request of the Subcontractor within this one hundred twenty (120)-day period.
- D. After termination, the Subcontractor shall submit a final termination settlement proposal to the NREL Subcontract Administrator in the form and with the certification prescribed by the NREL Subcontract Administrator. The Subcontractor shall submit the proposal promptly but no later than one (1) year from the effective date of termination unless extended in writing by the NREL Subcontract Administrator upon written request of the Subcontractor with this one (1)-year period. If the Subcontractor fails to submit the termination settlement proposal within the time allowed, the NREL Subcontract Administrator may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.
- E. Subject to paragraph (D) of this clause, the Subcontractor and the NREL Subcontract Administrator may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Subcontractor and any reasonable loss on outstanding commitments for personal services that the Subcontractor is unable to cancel; **provided**, that the Subcontractor exercised reasonable diligence in diverting such commitments to other operations. The subcontract shall be amended and the Subcontractor paid the agreed amount.
- F. The cost principles and procedures in Part 31.3 of the Federal Acquisition Regulations (FAR), in effect on the date of the subcontract, shall govern all costs claimed, agreed to, or determined under this clause; however, if the Subcontractor is not an educational institution, and is a nonprofit organization under Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Nonprofit Organizations," July 8, 1980, those cost principles shall apply; **provided**, that if the Subcontractor is a nonprofit institution listed in Attachment C of OMB Circular A-122, the cost principles at FAR 31.2 for commercial organizations shall apply to such Subcontractor.
- G. NREL may, under the terms and conditions it prescribes, make partial payments against costs incurred by the Subcontractor for the terminated portion of this subcontract, if the NREL Subcontract Administrator believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
- H. The Subcontractor has the right of appeal as provided under the Disputes clause, except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (D) and failed to request a time extension, there is no right of appeal.

**CLAUSE - TERMINATION (COST-REIMBURSEMENT) (SEP 1996) AND  
ALTERNATE IV - (TIME-AND-MATERIAL OR LABOR-HOUR) (SEP 1996)**

***Derived from FAR 52.249-6 (FD)***

***(Applies to cost reimbursement subcontracts except subcontracts for research and development work with educational or nonprofit institutions)***

- A. NREL may terminate performance of work under this subcontract in whole or, from time to time, in part, if --

1. The NREL Subcontract Administrator determines that a termination is in NREL's/Government's interest; or
  2. The Subcontractor defaults in performing this subcontract and fails to cure the default within ten (10) days (unless extended by the NREL Subcontract Administrator) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- B. The NREL Subcontract Administrator shall terminate by delivering to the Subcontractor a Notice of Termination specifying whether termination is for default of the Subcontractor or for convenience of NREL/Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Subcontractor was not in default or that the Subcontractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Subcontractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of NREL/Government.
- C. After receipt of a Notice of Termination, and except as directed by the NREL Subcontract Administrator, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
1. Stop work as specified in the notice.
  2. Place no further lower-tier subcontracts or orders (referred to as lower-tier subcontracts in this clause), except as necessary to complete the continued portion of the subcontract.
  3. Terminate all lower-tier subcontracts to the extent they relate to the work terminated.
  4. Assign to NREL, as directed by the NREL Subcontract Administrator, all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated, in which case NREL shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  5. With approval or ratification to the extent required by the NREL Subcontract Administrator, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts, the cost of which would be reimbursable in whole or in part, under this subcontract; approval or ratification will be final for purposes of this clause.
  6. Transfer title to the Government (if not already transferred) and, as directed by the NREL Subcontract Administrator, deliver to NREL --
    - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
    - (ii) The completed or partially completed plans, drawings, information, and other property that, if the subcontract had been completed, would be required to be furnished to NREL; and

- (iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this subcontract, the cost of which the Subcontractor has been or will be reimbursed under this subcontract.
- 7. Complete performance of the work not terminated.
- 8. Take any action that may be necessary, or that the NREL Subcontract Administrator may direct, for the protection and preservation of the property related to this subcontract that is in the possession of the Subcontractor and in which NREL/Government has or may acquire an interest.
- 9. Use its best efforts to sell, as directed or authorized by the NREL Subcontract Administrator, any property of the types referred to in subparagraph (C)(6) of this clause; **provided**, however, that the Subcontractor--
  - (i) Is not required to extend credit to any purchaser; and
  - (ii) May acquire the property under the conditions prescribed by, and at prices approved by, the NREL Subcontract Administrator. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by NREL under this subcontract, credited to the price or cost of the work, or paid in any other manner directed by the NREL Subcontract Administrator.
- D. The Subcontractor shall submit complete termination inventory schedules no later than one hundred twenty (120) days from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator upon written request of the Subcontractor within this one hundred twenty (120)-day period.
- E. After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Subcontractor may submit to the NREL Subcontract Administrator a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the NREL Subcontract Administrator. The Subcontractor may request the NREL/Government to remove those items or enter into an agreement for their storage. Within fifteen (15) days, NREL/Government will accept the items and remove them or enter into a storage agreement. The NREL Subcontract Administrator may verify the list upon removal of the items, or if stored, within forty-five (45) days from submission of the list, and shall correct the list, as necessary, before final settlement.
- F. After termination, the Subcontractor shall submit a final termination settlement proposal to the NREL Subcontract Administrator in the form and with the certification prescribed by the NREL Subcontract Administrator. The Subcontractor shall submit the proposal promptly, but no later than one (1) year from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator upon written request of the Subcontractor within this one (1)-year period. However, if the NREL Subcontract Administrator determines that the facts justify it, a termination settlement proposal may be received and acted on after one (1) year or any extension. If the Subcontractor fails to submit the proposal within the time allowed, the NREL Subcontract Administrator may determine,



on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.

- G. Subject to paragraph (F) of this clause, the Subcontractor and the NREL Subcontract Administrator may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The subcontract shall be amended, and the Subcontractor paid the agreed amount.
- H. If the Subcontractor and the NREL Subcontract Administrator fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the NREL Subcontract Administrator shall determine, on the basis of information available, the amount, if any, due the Subcontractor and shall pay the amount, which shall include the following:
1. All costs reimbursable under this subcontract, not previously paid, for the performance of this subcontract before the effective date of termination, and those costs that may continue for a reasonable time with the approval of or as directed by the NREL Subcontract Administrator; however, the Subcontractor shall discontinue those costs as rapidly as practicable.
  2. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the subcontract if not included in subparagraph (H)(1) of this clause.
  3. The reasonable costs of settlement of the work terminated, including--
    - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
    - (ii) The termination and settlement of lower-tier subcontracts (excluding the amounts of such settlements); and
    - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Subcontractor's termination settlement proposal may be included.
  4. A portion of the fee payable under the subcontract, determined as follows:
    - (i) If the subcontract is terminated for the convenience of NREL/Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the subcontract, but excluding subcontract effort included in lower-tier subcontractor's termination proposals, less previous payments for fee.
    - (ii) If the subcontract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by NREL is to the total number of articles (or amount of services) of a like kind required by the subcontract.

5. If the settlement includes only fee, it will be determined under subparagraph (H)(4) of this clause.
- I. The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this subcontract, shall govern all costs claimed, agreed to, or determined under this clause.
- J. The Subcontractor shall have the right of appeal, under the Disputes clause, from any determination made by the NREL Subcontract Administrator under paragraph (F), (H), or (L) of this clause, except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (F) and failed to request a time extension, there is no right of appeal. If the NREL Subcontract Administrator has made a determination of the amount due under paragraph (F), (H), or (L) of this clause, NREL shall pay the Subcontractor--
  1. The amount determined by the NREL Subcontract Administrator if there is no right of appeal or if no timely appeal has been taken; or
  2. The amount finally determined on an appeal.
- K. In arriving at the amount due the Subcontractor under this clause, there shall be deducted --
  1. All unliquidated advance or other payments to the Subcontractor, under the terminated portion of this subcontract.
  2. Any claim which NREL/Government has against the Subcontractor under this subcontract; and
  3. The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Subcontractor or sold under this clause and not recovered by or credited to NREL/Government.
- L. The Subcontractor and NREL Subcontract Administrator must agree to any equitable adjustment in fee for the continued portion of the subcontract when there is a partial termination. The NREL Subcontract Administrator shall amend the subcontract to reflect the agreement.
- M.
  1. NREL may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the subcontract, if the NREL Subcontract Administrator believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
  2. If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to NREL/Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the

retention or disposition, or a later date determined by the NREL Subcontract Administrator because of the circumstances.

N. The provisions of the clause relating to fee are inapplicable if this subcontract does not include a fee.

***ALTERNATE IV (SEP 1996).***

***(If the subcontract is a TIME-AND-MATERIAL or LABOR-HOUR subcontract, substitute the following paragraphs (H) and (L) for paragraphs (H) and (L) of the basic clause:)***

H. If the Subcontractor and the NREL Subcontract Administrator fail to agree in whole or in part on the amount to be paid because of the termination of work, the NREL Subcontract Administrator shall determine, on the basis of information available, the amount, if any, due the Subcontractor and shall pay the amount determined as follows:

1. If the termination is for the convenience of NREL/Government, include--

- (i) An amount for direct labor hours (as defined in the Schedule of the subcontract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the Subcontractor;
- (ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Subcontractor;
- (iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination if they are reasonably incurred after the effective date, with the approval of or as directed by the NREL Subcontract Administrator; however, the Subcontractor shall discontinue these expenses as rapidly as practicable;
- (iv) If not included in subdivision (H)(1)(i), (ii), or (iii) of this clause, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the subcontract; and
- (v) The reasonable costs of settlement of the work terminated, including--
  - a. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
  - b. The termination and settlement of Lower-tier subcontracts (excluding the amounts of such settlements); and
  - c. Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.

2. If the termination is for default of the Subcontractor, include the amounts computed under subparagraph (H)(1) of this clause but omit--

- (i) Any amount for preparation of the Subcontractor's termination settlement proposal; and
- (ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by NREL/Government.

\* \* \* \* \*

I. If the termination is partial, the Subcontractor may file with the NREL Subcontract Administrator a proposal for an equitable adjustment of the price(s) for the continued portion of the subcontract. The NREL Subcontract Administrator shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this clause shall be requested within ninety (90) days from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator.

**CLAUSE - TERMINATION (FIXED PRICE ARCHITECT-ENGINEER) (APR 1984)**

***Derived from FAR 52.249-7 (FD)***

A. NREL may terminate this subcontract in whole or, from time to time, in part, for NREL's/Government's convenience or because of the failure of the Subcontractor to fulfill the subcontract obligations. The NREL Subcontract Administrator shall terminate by delivering to the Subcontractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Subcontractor shall--

- 1. Immediately discontinue all services affected (unless the notice directs otherwise); and
- 2. Deliver to the NREL Subcontract Administrator all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this subcontract, whether completed or in process.

B. If the termination is for the convenience of NREL/Government, the NREL Subcontract Administrator shall make an equitable adjustment in the subcontract price but shall allow no anticipated profit on unperformed services.

C. If the termination is for failure of the Subcontractor to fulfill the subcontract obligations, NREL/Government may complete the work by subcontract or otherwise and the Subcontractor shall be liable for any additional cost incurred by NREL.

D. If, after termination for failure to fulfill subcontract obligations, it is determined that the Subcontractor had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of NREL/Government.

E. The rights and remedies of NREL/Government provided in this clause are in addition to any other rights and remedies provided by law or under this subcontract.

**CLAUSE - DEFAULT (FIXED PRICE SUPPLY AND SERVICE) (APR 1984)**

***Derived from FAR 52.249-8 (FD)***

A. 1. NREL may, subject to paragraphs (C) and (D) of this clause, by written notice of default to the Subcontractor, terminate this subcontract in whole or in part if the Subcontractor fails to --

- (i) Deliver the supplies or to perform the services within the time specified in this subcontract or any extension;
    - (ii) Make progress, so as to endanger performance of this subcontract (but see subparagraph (A)(2) of this clause); or
    - (iii) Perform any of the other provisions of this subcontract (but see subparagraph (A)(2) of this clause).
  - 2. NREL's right to terminate this subcontract under subdivisions (A)(1)(ii) and (iii) of this clause, may be exercised if the Subcontractor does not cure such failure within ten (10) days (or more if authorized in writing by the NREL Subcontract Administrator) after receipt of the notice from the NREL Subcontract Administrator specifying the failure.
- B. If NREL terminates this subcontract in whole or in part, it may acquire, under the terms and in the manner the NREL Subcontract Administrator considers appropriate, supplies or services similar to those terminated, and the Subcontractor will be liable to NREL/Government for any excess costs for those supplies or services. However, the Subcontractor shall continue the work not terminated.
- C. Except for defaults of subcontractors at any tier, the Subcontractor shall not be liable for any excess costs if the failure to perform the subcontract arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes include--
- 1. Acts of God or of the public enemy;
  - 2. Acts of the Government in either its sovereign or contractual capacity;
  - 3. Fires;
  - 4. Floods;
  - 5. Epidemics;
  - 6. Quarantine restrictions;
  - 7. Strikes;
  - 8. Freight embargoes; and
  - 9. Unusually severe weather.
- In each instance the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor.
- D. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Subcontractor and lower-tier subcontractor, and without the fault or negligence of either, the Subcontractor shall not be liable for any excess costs for failure to

perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Subcontractor to meet the required delivery schedule.

- E. If this subcontract is terminated for default, NREL may require the Subcontractor to transfer title to the Government and deliver to NREL, as directed by the NREL Subcontract Administrator, any--
  - 1. Completed supplies, and
  - 2. Partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Subcontractor has specifically produced or acquired for the terminated portion of this subcontract. Upon direction of the NREL Subcontract Administrator, the Subcontractor shall also protect and preserve property in its possession in which the Government has an interest.
- F. NREL shall pay subcontract price for completed supplies delivered and accepted. The Subcontractor and NREL Subcontract Administrator shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. NREL may withhold from these amounts any sum the NREL Subcontract Administrator determines to be necessary to protect NREL/Government against loss because of outstanding liens or claims of former lien holders.
- G. If, after termination, it is determined that the Subcontract was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of NREL/Government.
- H. The rights and remedies of NREL/Government in this clause are in addition to any other rights and remedies provided by law or under this subcontract.

**CLAUSE - DEFAULT (FIXED PRICE RESEARCH AND DEVELOPMENT) (APR 1984)**

***Derived from FAR 52.249-9 (FD)***

***(Applies to research and development subcontracts except subcontracts with educational or non-profit institutions on a no-profit basis)***

- A. 1. NREL may, subject to paragraphs (C) and (D) of this clause, by written Notice of Default to the Subcontractor, terminate this subcontract in whole or in part if the Subcontractor fails to --
  - (i) Perform the work under the subcontract within the time specified in this subcontract or any extension;
  - (ii) Prosecute the work so as to endanger performance of this subcontract (but see subparagraph (A)(2) of this clause); or
  - (iii) Perform any of the other provisions of this subcontract but see subparagraph (A)(2) of this clause).

2. NREL's right to terminate this subcontract under subdivisions (A)(1)(ii) and (iii) of this clause may be exercised if the Subcontractor does not cure such failure within ten (10) days (or more, if authorized in writing by the NREL Subcontract Administrator) after receipt of the notice from the NREL Subcontract Administrator specifying the failure.
- B. If NREL terminates this subcontract in whole or in part, it may acquire, under the terms and in the manner the NREL Subcontract Administrator considers appropriate, work similar to the work terminated, and the Subcontractor will be liable to NREL/Government for any excess costs for the similar work. However, the Subcontractor shall continue the work not terminated.
- C. Except for defaults of subcontractors at any tier, the Subcontractor shall not be liable for any excess costs if the failure to perform the subcontract arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes include--
1. Acts of God or of the public enemy;
  2. Acts of the Government in either its sovereign or contractual capacity;
  3. Fires;
  4. Floods;
  5. Epidemics;
  6. Quarantine restrictions;
  7. Strikes;
  8. Freight embargoes; and
  9. Unusually severe weather.
- In each instance the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor.
- D. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Subcontractor and lower-tier subcontractor, and without the fault or negligence of either, the Subcontractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Subcontractor to meet the required delivery schedule or other performance requirements.
- E. If this subcontract is terminated for default, NREL may require the Subcontractor to transfer title to the Government and deliver to NREL, as directed by the NREL Subcontract Administrator, any --
1. Completed or partially completed work not previously delivered to, and accepted by, NREL, and

2. Other property, including subcontract rights, specifically produced or acquired for the terminated portion of this subcontract. Upon direction of the NREL Subcontract Administrator, the Subcontractor shall also protect and preserve property in its possession in which the Government has an interest.
- F. NREL shall pay the subcontract price, if separately stated, for completed work it has accepted and the amount agreed upon by the Subcontractor and the NREL Subcontract Administrator for--
1. Completed work for which no separate price is stated,
  2. Partially completed work,
  3. Other property described above that it accepts, and
  4. The protection and preservation of the property.
- Failure to agree will be a dispute under the Disputes clause. NREL may withhold from these amounts any sum the NREL Subcontract Administrator determines to be necessary to protect NREL/Government against loss from outstanding liens or claims of former lien holders.
- G. If, after termination, it is determined that the Subcontractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of NREL/Government.
- H. The rights and remedies of NREL/Government in this clause are in addition to any other rights and remedies provided by law or under this subcontract.

**CLAUSE - DEFAULT (FIXED PRICE CONSTRUCTION) (APR 1984)**

***Derived from FAR 52.249-10 (FD)***

***(Applies to construction subcontracts)***

- A. If the Subcontractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this subcontract including any extension, or fails to complete the work within this time, NREL may, by written notice to the Subcontractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, NREL may take over the work and complete it by subcontract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Subcontractor and its sureties shall be liable for any damage to NREL/Government resulting from the Subcontractor's refusal or failure to complete the work within the specified time, whether or not the Subcontractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by NREL/Government in completing the work.
- B. The Subcontractor's right to proceed shall not be terminated nor the Subcontractor charged with damages under this clause, if --
1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes include --



- (i) Acts of God or of the public enemy,
- (ii) Acts of the Government in either its sovereign or contractual capacity,
- (iii) Acts of another Subcontractor in the performance of a subcontract with the Government,
- (iv) Fires,
- (v) Floods,
- (vi) Epidemics,
- (vii) Quarantine restrictions,
- (viii) Strikes,
- (ix) Freight embargoes,
- (x) Unusually severe weather, or
- (xi) Delays of lower-tier subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Subcontractor and the lower-tier subcontractors or suppliers; and

2. The Subcontractor, within ten (10) days from the beginning of any delay (unless extended by the NREL Subcontract Administrator), notifies the NREL Subcontract Administrator in writing of the causes of delay. The NREL Subcontract Administrator shall ascertain the facts and the extent of delay. If, in the judgment of the NREL Subcontract Administrator, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the NREL Subcontract Administrator shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

C. If, after termination of the Subcontractor's right to proceed, it is determined that the Subcontractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of NREL/Government.

D. The rights and remedies of NREL/Government in this clause are in addition to any other rights and remedies provided by law or under this subcontract.

**CLAUSE - EXCUSABLE DELAYS (APR 1984)**

***Derived from FAR 52.249-14 (FD)***

A. Except for defaults of subcontractors at any tier, the Subcontractor shall not be in default because of any failure to perform this subcontract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of these causes are--

1. Acts of God or of the public enemy,
2. Acts of the Government in either its sovereign or contractual capacity,
3. Fires,
4. Floods,
5. Epidemics,
6. Quarantine restrictions,
7. Strikes,
8. Freight embargoes, and
9. Unusually severe weather.

In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor. "Default" includes failure to make progress in the work so as to endanger performance.

- B. If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Subcontractor and lower-tier subcontractor, and without the fault or negligence of either, the Subcontractor shall not be deemed to be in default, unless--
1. The lower-tier subcontracted supplies or services were obtainable from other sources;
  2. The NREL Subcontract Administrator ordered the Subcontractor in writing to purchase these supplies or services from the other source; and
  3. The Subcontractor failed to comply reasonably with this order.
- C. Upon request of the Subcontractor, the NREL Subcontract Administrator shall ascertain the facts and extent of the failure. If the NREL Subcontract Administrator determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of NREL/Government under the termination clause of this subcontract.

#### **CLAUSE - REFUND OF ROYALTIES (FEB 1995)**

*Derived from DEAR 952.227-9 (FD)*

- A. The subcontract price includes certain amounts for royalties payable by the Subcontractor or lower-tier subcontractors or both, which amounts have been reported to the DOE through NREL.
- B. The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this subcontract or any lower-tier subcontract hereunder. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this subcontract or the copying of such data or data that is copyrighted.
- C. The Subcontractor shall furnish to the DOE through NREL, before final payment under this subcontract, a statement of royalties paid or required to be paid in connection with performing this subcontract and lower-tier subcontracts hereunder together with the reasons.

- D. The Subcontractor will be compensated for royalties reported under paragraph (C) of this clause, only to the extent that such royalties were included in the subcontract price and are determined by the DOE to be properly chargeable to the Government and allocable to the subcontract. To the extent that any royalties that are included in the subcontract price are not, in fact, paid by the Subcontractor or are determined by the DOE not to be properly chargeable to the Government and allocable to the subcontract, the subcontract price shall be reduced. Repayment or credit to the Government shall be made as the DOE directs. The approval by DOE of any individual payments or royalties shall not prevent the Government from contesting at any time the enforceability, validity, scope of, or title to, any patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.
- E. If, at any time within three (3) years after final payment under this subcontract, the Subcontractor for any reason is relieved in whole or in part from the payment of the royalties included in the final subcontract price as adjusted pursuant to paragraph (D) of this clause, the Subcontractor shall promptly notify the DOE through NREL of that fact and shall reimburse the Government in a corresponding amount.
- F. The substance of this clause, including this paragraph (F), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

**CLAUSE - INSPECTION IN ARCHITECT-ENGINEER SUBCONTRACTS (APR 1994)**

***Derived from DEAR 952.236-71***

***(Applies to architect-engineer subcontracts)***

NREL/Government, through any authorized representatives, have the right at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by NREL/Government on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall provide and shall require his lower-tier subcontractor to provide all reasonable facilities and assistance for the safety and convenience of NREL/Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

**CLAUSE - FOREIGN TRAVEL (FEB 1997)**

***Derived from DEAR 952.247-70 (FD)***

- A. Foreign travel, when charged directly, shall be subject to the prior approval of the NREL Subcontract Administrator for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada, Mexico, and the United States and its territories and possessions.
- B. Request for approval shall be submitted at least forty-five (45) days prior to the planned departure date, be on a Request for Approval of Foreign Travel form, and when applicable, include a notification of proposed Soviet-bloc travel.

**CLAUSE - INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (JUN 1997)**

***Derived from DEAR 970.5204-2 (FD) (Applies to subcontracts that involve complex or hazardous work that is to be performed on a Government-owned or -leased facility.)***

- A. For the purposes of this clause,
  - 1. "Safety" encompasses environment, safety, and health, including pollution prevention and waste minimization; and
  - 2. "Employees" include Lower-tier subcontractor employees.

- B. In performing work under this subcontract, the Subcontractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Subcontractor shall exercise a degree of care commensurate with the work and the associated hazards. The Subcontractor shall ensure that management of environment, safety, and health (ES&H) functions and activities becomes an integral but visible part of the Subcontractor's work planning and execution processes. The Subcontractor shall, in the performance of work, ensure that:
1. Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Subcontractor and lower-tier subcontractor employees managing or supervising employees performing work.
  2. Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.
  3. Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
  4. Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
  5. Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
  6. Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
  7. The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by NREL/Government and the Subcontractor. These agreed-upon conditions and requirements are requirements of the subcontract and binding upon the Subcontractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.
- C. The Subcontractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (B) of this clause at a minimum. Documentation of the System shall describe how the Subcontractor will:
1. Define the scope of work;
  2. Identify and analyze hazards associated with the work;

3. Develop and implement hazard controls;
  4. Perform work within controls; and
  5. Provide feedback on adequacy of controls and continue to improve safety management.
- D. The System shall describe how the Subcontractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the Subcontractor will measure system effectiveness.
- E. The Subcontractor shall submit to the NREL Subcontract Administrator documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the NREL Subcontract Administrator. Guidance on the preparation, content, review, and approval of the System will be provided by the NREL Subcontract Administrator. On an annual basis, the Subcontractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the Subcontractor's business processes for work planning, budgeting, authorization, execution, and change control.
- F. The Subcontractor shall comply with, and assist the DOE in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this subcontract on Laws, Regulations, and DOE Directives. The Subcontractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this subcontract.
- G. The Subcontractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Subcontractor fails to provide resolution or if, at any time, the Subcontractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the NREL Subcontract Administrator may issue an order stopping work in whole or in part. Any stop work order issued by a NREL Subcontract Administrator under this clause (or issued by the Subcontractor to a lower-tier subcontractor in accordance with paragraph (I) of this clause) shall be without prejudice to any other legal or contractual rights of NREL/Government. In the event that the NREL Subcontract Administrator issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the NREL Subcontract Administrator. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- H. The Subcontractor is responsible for compliance with the ES&H requirements applicable to this contract regardless of the performer of the work.
- I. The Subcontractor shall include a clause substantially the same as this clause in lower-tier subcontracts involving complex or hazardous work on site at a DOE-owned or -leased facility. Such lower-tier subcontracts shall provide for the right to stop work under the conditions described in paragraph (G) of this clause. Depending on the complexity and hazards associated with the work, the

Subcontractor may require that the lower-tier subcontractor submit a Safety Management System for the Subcontractor's review and approval.

**CLAUSE - ACCOUNTS, RECORDS, AND INSPECTION (JUN 1996)**

***Derived from DEAR 970.5204-9 (FD)***

A. Accounts.

The Subcontractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting all allowable costs incurred, revenues or other applicable credits, fixed-fee accruals, and the receipt, use and disposition of all Government property coming into the possession of the Subcontractor under this subcontract. The system of accounts employed by the Subcontractor shall be acceptable to NREL/Government and in accordance with generally accepted accounting principles consistently applied.

B. Inspection and Audit of Accounts and Records.

All books of account and records relating to this subcontract shall be subject to inspection and audit by NREL/Government at all reasonable times, before and during the period of retention provided for in (D) below, and the Subcontractor shall afford proper facilities for such inspection and audit.

C. Audit of Subcontractors' Records.

The Subcontractor also agrees, with respect to any lower-tier subcontracts (including fixed price or unit-price lower-tier subcontracts or purchase orders) where, under the terms of the lower-tier subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the lower-tier subcontractor's costs or arrange for such an audit to be performed by the cognizant Government audit agency through the NREL Subcontract Administrator.

D. Disposition of Records.

Except as agreed upon by NREL and the Subcontractor, all financial and cost reports, books of account and supporting documents, and other data evidencing costs allowable, revenues, and other applicable credits under this subcontract, shall be the property of the Government, and shall be delivered to NREL or otherwise disposed of by the Subcontractor either as the NREL Subcontract Administrator may from time to time direct during the progress of the work or, in any event, as the NREL Subcontract Administrator shall direct upon completion or termination of this subcontract and final audit of accounts hereunder. Except as provided in this subcontract, all other records in the possession of the Subcontractor relating to this subcontract shall be preserved by the Subcontractor for a period of three (3) years after final payment under this subcontract or otherwise disposed of in such manner as may be agreed upon by NREL/Government and the Subcontractor.

E. Reports.

The Subcontractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this subcontract as the NREL Subcontract Administrator may from time to time require.

F. Inspections.

NREL/Government shall have the right to inspect the work and activities of the Subcontractor under this subcontract at such time and in such manner as it shall deem appropriate.

G. Lower-tier Subcontracts.

The Subcontractor further agrees to require the inclusion of provisions similar to those in paragraphs (A) through (G) and paragraph (I) of this clause in all lower-tier subcontracts (including fixed price or unit price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the lower-tier subcontract, costs incurred are a factor in determining the amount payable to the lower-tier subcontractor.

*(The following paragraph (H) shall be included in--*

- 1. All cost-type subcontracts (or lower-tier subcontracts) involving an estimated cost exceeding \$5 million and expected to run more than two (2) years, and*
- 2. Any other cost-type subcontract (or lower-tier subcontract) where deemed advisable by the DOE Head of the Contracting Activity and when the Subcontractor (or lower-tier subcontractor) already has an established internal audit organization.)*

H. Internal Audit.

The Subcontractor agrees to conduct an internal audit and examination satisfactory to NREL/Government of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this subcontract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the NREL Subcontract Administrator.

I. Comptroller General.

1. The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this subcontract or a lower-tier subcontract hereunder.
2. This paragraph may not be construed to require the Subcontractor or lower-tier subcontractor to create or maintain any record that the Subcontractor or lower-tier subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
3. Nothing in this subcontract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this subcontract.

**CLAUSE - PRINTING CLAUSE FOR SUBCONTRACTS (APR 1984)**

***Derived from DEAR 970.5204-19 (FD)***

- A. To the extent that duplicating or printing services may be required in the performance of this subcontract, the Subcontractor shall provide or secure such services in accordance with the

Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.

- B. The term "Printing" includes the following processes: composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this subcontract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.
- C. Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.
- D. In all lower-tier subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations), the Subcontractor shall include a provision substantially the same as this clause.

**CLAUSE - PROPERTY (JUNE 1997)**  
***Derived from DEAR 970.5204-21 (FD)***  
***(Applies to cost reimbursement subcontracts)***

- A. Furnishing of Government property.

The Government reserves the right to furnish any property or services required for the performance of the work under this subcontract.

- B. Title to property.

Except as otherwise provided by the NREL Subcontract Administrator, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Subcontractor, for the cost of which the Subcontractor is entitled to be reimbursed as a direct item of cost under this subcontract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The Subcontractor shall make such disposition of rejected items as the NREL Subcontract Administrator shall direct. Title to other property, the cost of which is reimbursable to the Subcontractor under this subcontract, shall pass to and vest in the Government upon

- 1. Issuance for use of such property in the performance of this subcontract, or
- 2. Commencement of processing or use of such property in the performance of this subcontract, or
- 3. Reimbursement of the cost thereof by the Government, whichever first occurs.

Property furnished by the Government and property purchased or furnished by the Subcontractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government



property or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

C. Identification.

To the extent directed by the NREL Subcontract Administrator, the Subcontractor shall identify Government property coming into the Subcontractor's possession or custody, by marking and segregating in such a way, satisfactory to the NREL Subcontract Administrator, as shall indicate its ownership by the Government.

D. Disposition.

The Subcontractor shall make such disposition of Government property which has come into the possession or custody of the Subcontractor under this subcontract as the NREL Subcontract Administrator may direct during the progress of the work or upon completion or termination of this subcontract. The Subcontractor may, upon such terms and conditions as the NREL Subcontract Administrator may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the NREL Subcontract Administrator and the Subcontractor as the fair value thereof. The amount received by the Subcontractor as the result of any disposition, or the agreed fair value of any such property acquired by the Subcontractor, shall be applied in reduction of costs allowable under this subcontract or shall be otherwise credited to account to the Government, as the NREL Subcontract Administrator may direct. Upon completion of the work or the termination of this subcontract, the Subcontractor shall render an accounting, as prescribed by the NREL Subcontract Administrator, of all Government property which had come into the possession or custody of the Subcontractor under this subcontract.

E. Protection of Government property management of high-risk property and classified materials.

1. The Subcontractor shall take all reasonable precautions, and such other actions as may be directed by the NREL Subcontract Administrator, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect Government property in the Subcontractor's possession or custody.
2. In addition, the Subcontractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management regulations (41 CFR chapter 101), the Department of Energy Property Management regulations (41 CFR chapter 109), and other applicable regulations.
3. High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

F. Risk of loss of Government property.

1. (i) The Subcontractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:
  - a. Willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel;
  - b. Failure of the Subcontractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the NREL Subcontract Administrator to safeguard such property under paragraph (E) of this clause; or
  - c. Failure of Subcontractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (I)(1) of this clause.
- (ii) If, after an initial review of the facts, the NREL Subcontract Administrator informs the Subcontractor that there is reason to believe that the loss, destruction of, or damage to the Government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Subcontractor to show that the Subcontractor should not be required to compensate the Government for the loss, destruction, or damage.
2. In the event that the Subcontractor is determined liable for the loss, destruction or damage to Government property in accordance with (F)(1) of this clause, the Subcontractor's compensation to the Government shall be determined as follows:
  - (i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the NREL Subcontract Administrator shall determine the value of such property, consistent with all relevant facts and circumstances.
  - (ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the NREL Subcontract Administrator shall determine the value of such property, consistent with all relevant facts and circumstances.
3. The portion of the cost of insurance obtained by the Subcontractor that is allocable to coverage of risks of loss referred to in paragraph (F)(1) of this clause is not allowable.

G. Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the Subcontractor with a value above the threshold set out in the Subcontractor's approved property management system, the Subcontractor:

1. Shall immediately inform the NREL Subcontract Administrator of the occasion and extent thereof,
2. Shall take all reasonable steps to protect the property remaining, and
3. Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the NREL Subcontract Administrator.

The Subcontractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

H. Government property for Government use only.

Government property shall be used only for the performance of this subcontract.

I. Property Management.

1. Property Management System.

- (i) The Subcontractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the subcontract. The Subcontractor's property management system shall be submitted to the NREL Subcontract Administrator for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management regulations and Department of Energy Property Management regulations, and such directives or instructions which the NREL Subcontract Administrator may from time to time prescribe.
- (ii) In order for a property management system to be approved, it must provide for:
  - a. Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;
  - b. Employee personal responsibility and accountability for Government-owned property;
  - c. Full integration with the Subcontractor's other administrative and financial systems; and
  - d. A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.
- (iii) Approval of the Subcontractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (I)(2) of this clause.

2. Property Inventory.

- (i) Unless otherwise directed by the NREL Subcontract Administrator, the Subcontractor shall within six months after execution of the subcontract provide a baseline inventory covering all items of Government property.
- (ii) If the Subcontractor is succeeding another Subcontractor in the performance of this subcontract, the Subcontractor shall conduct a joint reconciliation of the property inventory with the predecessor Subcontractor.

The Subcontractor agrees to participate in a joint reconciliation of the property inventory at the completion of this subcontract. This information will be used to provide a baseline for the succeeding subcontract as well as information for closeout of the predecessor subcontract.

J. The term "Subcontractor's managerial personnel" as used in this clause means the Subcontractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of:

- 1. All or substantially all of the Subcontractor's business; or
- 2. All or substantially all of the Subcontractor's operations at any one facility or separate location to which this subcontract is being performed; or
- 3. A separate and complete major industrial operation in connection with the performance of this subcontract; or
- 4. A separate and complete major construction, alteration, or repair operation in connection with performance of this subcontract; or
- 5. A separate and discrete major task or operation in connection with the performance of this subcontract.

***(Note: Substitute the following paragraph (J) for nonprofit Subcontractors:)***

J. The term "Subcontractor's managerial personnel" as used in this clause means the Subcontractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of:

- 1. The Subcontractor's business; or
- 2. The Subcontractor's operations at any one facility or separate location at which this subcontract is being performed; or
- 3. The Subcontractor's Government property system and/or a Major System Acquisition or Major Project as defined in DOE Order 4700.1 (Version in effect on effective date of subcontract).

- K. The Subcontractor shall include this clause in cost reimbursable lower-tier subcontracts.

**CLAUSE - TAXES (APR 1984)**

***Derived from DEAR 970.5204-23***

- A. The Subcontractor agrees to notify the NREL Subcontract Administrator of any State or local tax, fee, or charge levied or purported to be levied on or collected from the Subcontractor with respect to the subcontract work, any transaction thereunder, or property in the custody or control of the Subcontractor and constituting an allowable item of cost if due and payable, but which the Subcontractor has reason to believe, or the NREL Subcontract Administrator has advised the Subcontractor, is or may be inapplicable or invalid; \* and the Subcontractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the NREL Subcontract Administrator. Any State or local tax, fee, or charge paid with the approval of the NREL Subcontract Administrator or on the basis of advice from the NREL Subcontract Administrator that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.

***\*Requirement for notice may be broadened to include all State and local taxes which may be claimed as allowable costs when considered to be appropriate.***

- B. The Subcontractor agrees to take such action as may be required or approved by the NREL Subcontract Administrator to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the NREL Subcontract Administrator to seek recovery of any payments made, including assignment to NREL/Government, or its designee of all rights to an abatement or refund thereof, and granting permission for NREL/Government to join with the Subcontractor in any proceedings for the recovery thereof or to sue for recovery in the name of the Subcontractor. If the NREL Subcontract Administrator directs the Subcontractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the Subcontractor for a tax, fee, or charge it has refrained from paying in accordance with this article, the procedures and requirements of the article entitled "Litigation and Claims" shall apply and the costs and expenses incurred by the Subcontractor shall be allowable items of costs, as provided in this subcontract, together with the amount of any judgment rendered against the Subcontractor.
- C. NREL/Government shall hold the Subcontractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of NREL/Government.

**CLAUSE - PERMITS OR LICENSES (APR 1984)**

***Derived from DEAR 970.5204-29***

Except as otherwise directed by the NREL Subcontract Administrator, the Subcontractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States

and of the state, territory, and political subdivision in which the work under this subcontract is performed.

**CLAUSE - ACCESS TO AND OWNERSHIP OF RECORDS (JUNE 1997)**

***Derived from DEAR 970.5204-79 (FD)***

***(Applies to cost reimbursement subcontracts)***

A. Government-owned records.

Except as provided in paragraph (B) of this clause, all records acquired or generated by the Subcontractor in its performance of this subcontract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the Subcontractor either as the NREL Subcontract Administrator may from time to time direct during the process of the work or, in any event, as the NREL Subcontract Administrator shall direct upon completion or termination of the subcontract.

B. Subcontractor-owned records.

The following records are considered the property of the Subcontractor and are not within the scope of paragraph (A) of this clause. (The NREL Subcontract Administrator shall identify which of the following categories of records will be included in the clause.)

1. Employment-related records (such as workers' compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns, and other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/ health-related records and similar files), except for those records described by the subcontract as being maintained in Privacy Act systems of records.
2. Confidential Subcontractor financial information, and correspondence between the Subcontractor and other segments of the Subcontractor located away from the NREL facility (i.e., the Subcontractor's corporate headquarters);
3. Records relating to any procurement action by the Subcontractor, except for records that under 48 CFR (DEAR) 970.5204-9, Accounts, Records, and Inspection, are described as the property of the Government; and
4. Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and
5. [Reserved]

C. Subcontract completion or termination.

In the event of completion or termination of this subcontract, copies of any of the Subcontractor-owned records identified in paragraph (B) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor Subcontractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.

D. Inspection, copying, and audit of records.

All records acquired or generated by the Subcontractor under this subcontract in the possession of the Subcontractor, including those described at paragraph (B) of this clause, shall be subject to inspection,

copying, and audit by the Government or its designees at all reasonable times, and the Subcontractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the NREL Subcontract Administrator, the Subcontractor shall deliver such records to a location specified by the NREL Subcontract Administrator for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

E. Applicability.

Paragraphs (B), (C), and (D) of this clause apply to all records without regard to the date or origination of such records.

F. Records retention standards.

Special records retention standards, described at DOE Order 1324.5B, Records Management Program and DOE Records Schedules (version in effect on effective date of subcontract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the Subcontractor. In addition, the Subcontractor shall retain individual radiation exposure records generated in the performance of work under this subcontract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the subcontract, the Government exercises its right under paragraph (C) of this clause to obtain copies and delivery of records described in paragraphs (A) and (B) of this clause.

G. Flow down.

The Subcontractor shall include the requirements of this clause in all lower-tier subcontracts that are of a cost-reimbursement type if any of the following factors is present:

1. The value of the lower-tier subcontract is greater than \$2 million (unless specifically waived by the NREL Subcontract Administrator);
2. The NREL Subcontract Administrator determines that the lower-tier subcontract is, or involves, a critical task related to the subcontract; or
3. The lower-tier subcontract includes 48 CFR (DEAR) 970.5204-2, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

**CLAUSE -- ACCESS SECURITY (SPECIAL)(APR 1999)**

- A. Access to NREL operated facilities is controlled in accordance with the DOE's requirements. The Subcontractor shall ensure that any of its, or its lower-tier subcontractors, officers, employees, or agents be specifically authorized site access by an NREL employee, and identified, badged, and registered by NREL Security prior to entering any NREL operated facility.
- B. The Subcontractor shall further ensure that any of its, or its lower-tier subcontractors, officers, employees, or agents who are not U.S. citizens or U.S. permanent residents and who will perform subcontract work on NREL operated facilities for a total of thirty (30) calendar days or greater, or who are citizens of a DOE designated sensitive country, or who work for a company based in a sensitive country, or who are stateless persons, submit a completed DOE Form IA 473 to NREL six to eight weeks before access is required. Access shall be subject to DOE approval. Any such person denied access by DOE shall not be assigned by the Subcontractor to work at NREL operated facilities.

- C. The Subcontractor shall provide to the Subcontract Administrator, prior to the initiation of work, evidence, including visa types and expiration dates, that legally sufficient work permits have been obtained from the U.S. Immigration and Naturalization Service, and such permits are properly maintained, for any of its, or its lower-tier subcontractors officers, employees, or agents who are not U.S. citizens or U.S. permanent residents and who will perform subcontract work at NREL operated facilities.
- D. Further, after the Subcontractor, or its lower-tier subcontractors, has commenced subcontract work, the Subcontractor shall provide to the Subcontract Administrator similar advance notice, including visa types and expiration dates, for all subsequently assigned individuals who are not U.S. citizens or U.S. permanent residents who will perform subcontract work at NREL operated facilities.
- E. NREL reserves the right to revoke site access authorization for any person violating NREL or DOE safety and security policies and procedures.
- F. As a condition of entry to NREL premises, the Subcontractor agrees to permit NREL security personnel to search its, and its lower-tier subcontractors, officers, employees, or agents vehicles, packages, tool boxes, or other containers for the purpose of preventing prohibited articles access to NREL premises or to detect or deter the unauthorized removal of Government property from NREL.
- G. Prohibited articles include cameras, copying machines, reproduction devices, recording devices, radio transmitters, firearms, explosive devices, incendiary devices, dangerous weapons or materials, controlled substances (illegal drugs), or alcoholic beverages.
- H. The Subcontractor shall include this article, including this Paragraph H, in all lower-tier subcontracts involving work at NREL operated facilities.